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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-201

CITY OF RICHMOND, VIRGINIA,

*Appellant,*

v.

UNITED STATES OF AMERICA and
WILLIAM B. SAXBE, ATTORNEY GENERAL, and
CURTIS HOLT, SR. *et al.* and
CRUSADE FOR VOTERS OF RICHMOND, *et. al.*,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

## JURISDICTIONAL STATEMENT

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CURTIS HOLT, SR. *et al.* and
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*Appellees.*

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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## JURISDICTIONAL STATEMENT

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Appellants appeal from the judgment of the United States District Court for the District of Columbia, entered on June 6, 1974, denying Appellant's request for declaratory judgment. They submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial

question is presented. This case involves the frustration of the voting rights of the citizens of the City of Richmond since 1970 due, in substantial part, to a procedural morass involving two Federal Court proceedings and an order, April 24, 1972, by this Court enjoining the holding of such City elections, *Holt v. City of Richmond*, 406 U.S. 903.

## OPINION BELOW

The opinion of the District Court for the District of Columbia is not yet reported. Copies of the judgment and opinion of the District Court, and the Findings of Fact and Conclusions of Law of the Special Master appointed by the District Court, are attached hereto as Appendices A, B, and C.

## JURISDICTION

This suit was brought under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §1973c (1970), on a request for declaratory judgment. The judgment of the District Court was entered on June 6, 1974. Notice of appeal was filed in that Court on July 15, 1974. The jurisdiction of this Court to review this decision by direct appeal is conferred by 42 U.S.C. §1973c (1970).



## QUESTIONS PRESENTED

1. Whether the District Court below misapplied and misconstrued the principles enunciated in *City of Petersburg v. United States*, 354 F. Supp. 1021 (D.D.C. 1972), *aff'd*, 410 U.S. 962, and then engrafted new requirements, not intended by Congress, onto the Voting Rights Act of 1965, by refusing to approve Appellant's request for declaratory judgment and holding that, if impermissible *purpose* is involved in an annexation, an "extra burden" rests on Appellant beyond that required to cure any prohibited *effect*.

2. Whether the District Court below erred in finding that the Voting Rights Act encompasses requirements so unique as to enable that Court to find an impermissible purpose in the annexation, in direct conflict with the decision of the Court of Appeals in *Holt v. City of Richmond*, 334 F. Supp. 228 (E.D. Va. 1971), *rev'd*, 459 F.2d 1093 (4th Cir. 1972), *cert. denied*, 408 U.S. 931 (*Holt I*), which, on the identical evidence and record, found no such purpose in a suit brought under the Fifteenth Amendment.

3. Whether the District Court below exceeded the jurisdiction granted by the Voting Rights Act in (1) asserting jurisdiction "to enforce the direct command of Section 5 by enjoining the annexation in order that councilmanic elections within Richmond's old boundaries can be immediately held", and then (2) requiring the District Court in Virginia, in the Intervenor's separate suit, to determine a remedy.

4. Whether the District Court below properly required the economic and administrative benefits of

annexation to be established in order to render a declaratory judgment that the voting changes resulting from annexation, as amended, did not have the purpose and effect of abridging the right to vote on account of race or color.

5. Whether approval of Appellant's 9-Ward Plan by the Attorney General, and his determination that the proposed change does not have a racially discriminatory purpose or effect, may be set aside or given no weight by the District Court below.

6. Whether a determination by the Court of Appeals that no violation of the Fifteenth Amendment had resulted from the annexation was *res judicata* as to the issues in a suit under Section 5 of the Voting Rights Act involving substantially the same parties.

7. Whether the decision in *Allen v. State Board of Elections*, 393 U.S. 544, requires the disapproval of an annexation which creates an incidental dilution of the black vote but which results from a legitimate and necessary governmental action, not addressed to voting or voting standards, practices or procedures.

## STATUTE INVOLVED

Section 5 of the Voting Rights Act, as amended by Act of June 22, 1970, 84 Stat. 315, 42 U.S.C. §1973c (1970), is set forth in Appendix D hereto. This case also involves the application of the Fifteenth Amendment.



## STATEMENT

The City of Richmond, like all cities in Virginia, is independent and not a part of the counties surrounding it. Its boundaries may be changed only by judicial decree, after an adversary proceeding against the county from which land area is sought, or by consolidation of the city and county after a majority of those voting in a referendum in each political subdivision have separately agreed thereto.

Pursuant to the provision of §15.1-1032 *et seq.*, Ch. 25, Code of Va. (1973), the City of Richmond originally instituted an annexation proceeding in 1961 against Chesterfield County. The City simultaneously filed another case against Henrico County which also adjoins the City. An award by the three-judge annexation Court in the Henrico County case was refused by the City. After various delays, the annexation case against Chesterfield County came up for trial in September, 1968. After further delay by the three judge annexation Court and after a trial lasting over six weeks, the City of Richmond established, as required by Virginia statutes, that it was necessary and expedient to annex certain territory adjoining the City located in Chesterfield County, §15.1-1041. Officials of the City of Richmond and the County of Chesterfield had entered into a compromise agreement outside of Court during the summer of 1969, which was presented to the Court for consideration. After hearing additional evidence, including that from various intervenors, a decree was entered in July, 1969, incorporating to a large extent the suggested compromise and awarding the

City approximately twenty-three square miles of land area. §15.1-1042.

The pre-annexation population of the City of Richmond as of 1970 was 202,359. Of these, 103,377 were non-white, and 98,982 white, persons. The annexation added to the City, according to the 1970 United States Census figures, 47,072 people. Of these, 1,389 were non-white, and 45,683 white, persons. The population of Chesterfield County as of 1968, prior to annexation, was 102,633 white, and 9,845 non-white, persons.

The intervenors in this annexation case moved for a stay of the annexation decree and an appeal to the Supreme Court of Virginia. *City of Richmond v. County of Chesterfield*, Circuit Court of Chesterfield County, July 1, 1969, *writ of error refused sub nom., Deerbourne Civic and Recreation Association v. City of Richmond*, 210 Va. 1i (1970), *cert. denied*, 397 U.S. 1038. Both were denied. Intervenors then petitioned for a writ of certiorari and stay to this Court, but both were denied. 397 U.S. 1038. The intervenors in this case, Crusade for Voters and Curtis Holt, Sr., were not intervenors in the annexation suit, and intervened herein over the objection of Appellant.

On January 1, 1970, the City took jurisdiction over the area awarded to it from Chesterfield County and has continued to operate, manage and supervise the area since that date. An election was conducted for City Councilmen in the newly enlarged City in May, 1970. This election was conducted on an at-large basis as provided by City Charter since 1948. At that time incidental voting changes resulting from annexation had



not been construed to come under the Voting Rights Act of 1965.[1]

Approximately one year after the annexation decree became effective, on January 28, 1971, two weeks after the decision in *Perkins v. Matthews*, 400 U.S. 379, the City submitted the voting change resulting from the annexation decree by letter from the City Attorney to the Attorney General of the United States in accordance with the alternative provisions of Section 5 of the Act. The Attorney General interposed an objection by letter to the City Attorney dated May 7, 1971. The Attorney General was asked to reconsider his objections by letter dated August 2, 1971, after the decision in *Whitcomb v. Chavis*, 403 U.S. 124, since the Attorney General in his previous letter had relied on that case before it was reversed by this Court. By letter dated September 30, 1971, the Attorney General again

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[1] The Opinion below states, App. B, p. 14, that the election of 1970 was concededly illegal. This is not the case. The City of Richmond has never conceded that the voting consequences of annexation were covered under the Voting Rights Act, until the decision in *Perkins v. Matthews*, 400 U.S. 379. Further, the District Court states, App. B, p. 15, that it was only after *Perkins* and after the Attorney General had informed Richmond that it was in violation, that the City made its "belated attempts" to comply with the Act. This is erroneous, and is a gross mischaracterization of the evidence on the record. Immediately after *Perkins*, Appellant submitted its request to the Attorney General, who never informed Appellant of anything at all, *except in response to Appellant's requests*, which were made pursuant to its efforts to comply with Section 5. In short, Appellant was not prompted to action by the Attorney General, and there is no evidence in the record to support the statement of the District Court.

advised the City Attorney that he still declined to lift his objection.

Approximately one month after the original submission for approval to the Attorney General, on February 24, 1971, a class action was instituted in the United States District Court for the Eastern District of Virginia in the name of Curtis Holt, Sr. It alleged primarily that the voting rights of the plaintiff class guaranteed by the Fifteenth Amendment had been violated by the change resulting from the annexation. The District Court, on November 23, 1971, ruled that the voting rights guaranteed by the Fifteenth Amendment had been violated, and ordered a new election of City Councilmen. Seven were to be elected at large by the former City residents, and two elected at large, primarily from the newly annexed area. This election order was stayed on December 8, 1971, by the United States Court of Appeals for the Fourth Circuit. On appeal, by both the City and Holt, this Court of Appeals ruled that no wrongful purpose, but rather valid reasons, existed for the annexation and that the Fifteenth Amendment had not been violated, thus reversing the lower Court's decision. A Writ of Certiorari was denied by this Court. *Holt v. City of Richmond,* 334 F. Supp. 228 (E.D. Va. 1971), *rev'd,* 459 F.2d 1093 (4th Cir. 1972), *cert. denied,* 408 U.S. 931 (*Holt I*).

Based on the decision by the Fourth Circuit Court of Appeals, the City Attorney by letter dated July 5, 1972, again asked the United States Attorney General to reconsider his objection on the grounds that the Voting Rights Act of 1965 only codifies rights



guaranteed by the Fifteenth Amendment. Due to pending litigation, the Attorney General declined to reconsider his administrative objection. As explained hereafter, he subsequently has approved Appellant's plan for elections of City councilmen on a ward basis, as being in compliance with the Voting Rights Act. This is exactly the same plan which the District Court below rejected.

On December 9, 1971, Curtis Holt, Sr. instituted another suit in the United States District Court for the Eastern District of Virginia (*Holt II*) (Case No. C.A. 695-71-R). He alleged, *inter alia,* that the City had not complied with Section 5 of the Voting Rights Act of 1965, and that, accordingly, the annexation of territory from Chesterfield County was invalid. A three-judge Court was convened pursuant to 28 U.S.C. §2284 (1970). The plaintiff in that action subsequently sought an injunction against the election officials of the City of Richmond, to restrain them from holding the election of City Council members, scheduled under Virginia law for the first Tuesday in May, 1972. The three-judge Court refused to enjoin the election. Upon application to the Chief Justice of the United States, the election was stayed on April 24, 1972, until further order. 406 U.S. 903. A subsequent Order was entered by the three-judge Court on October 12, 1972, which enjoined any elections of City officials.

Since the Attorney General declined to reconsider his objection, the City filed this suit in the District Court for the District of Columbia pursuant to Section 5 of the Act, seeking approval of the voting changes resulting from the annexation, and relying upon *Holt I*

as dispositive of the issues. Since Richmond's City Council was elected at large, *City of Petersburg v. United States*, 354 F. Supp. 1021 (D.D.C. 1972), *aff'd*, 410 U.S. 962, decided after the institution of this suit, appeared to be similar to this case, as was observed by the Chief Judge of the Court below at a pre-trial conference. Therefore, although believing *Holt I* fully had settled the issue, the City decided to file an Amended Complaint seeking approval of the voting changes in the context of a ward system for electing councilmen.

After public hearings, a proposed ward plan was adopted by the City Council of the City of Richmond and presented to the Attorney General. The Department of Justice, after consultations, suggested some modifications which were approved by the City Council. The ward plan thus evolved was then jointly submitted to the District Court by Appellant and the Attorney General.

The wards were established to meet traditional legal standards as well as the one-man-one-vote requirements. They also reflected a majority of white voting age population in four wards, and a majority of black voting age population in four wards, with the ninth ward having a substantial number of both white and black voting age population, with a white majority.

The black voting age population of Richmond was 44.8 percent before the annexation and 37.3 percent after annexation. The ward plan submitted to the District Court below by the City and the United States Attorney General reflected accurately, to the greatest extent reasonably possible, the black-white ratio of



voting age population, as it existed before annexation.

The District Court below referred the case to a Special Master for a hearing. After the hearing the Master recommended de-annexation to that District Court. The latter Court refrained from ordering de-annexation, but the majority believed it had the power to do so if it chose. (App. B, p. 32). The District Court also refused to grant the declaratory judgment sought by Appellant, holding that the ward plan submitted by the City and the United States did not, to the extent possible, minimize dilution of the black vote (*Id.*, p. 23). The Court below, in effect, held that the City must "over-compensate" the black vote by having more wards with predominantly black voters than the total black voting age population of the City would warrant.

The District Court below held that no economic or financial benefits for the City could be ascribed to the annexation (App. B, pp. 20-21). Appellant and the Attorney General interpret the Voting Rights Act of 1965 as being concerned only with voting changes and not economic considerations. In addition, the necessity and expediency of annexation had been established in the state annexation Court and in *Holt I*, both of which records were part of the record in this case. The earlier proved financial benefits of annexation were reinforced by a report published by the Urban Institute and tendered to the Court, but not accepted as evidence.[2]

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[2] "The Impact of Annexation on City Finances: A Case Study in Richmond, Virginia." Thomas Muller and Grace Dawson, The Urban Institute, May, 1973. The Urban Institute is a non-profit, independent, research corporation. The case study was done with the financial support of the Ford Foundation.

That Court gave no legal basis for linking its economic and administrative findings with the voting rights protected by the Act.

The District Court below took no affirmative action as to remedy. In refusing to grant Appellant's declaratory judgment, that Court suggested to Intervenor Holt that he seek a remedy in his other case pending before a three-judge Court of the United States District Court for the Eastern District of Virginia. (App. B, p. 32). Appellant's motion to vacate and stay the order of the District Court, in order to preserve the time for appeal while proceeding in the Virginia District Court, was denied July 9, 1974, by the District Court below.

## THE QUESTIONS ARE SUBSTANTIAL

Appellant, City of Richmond, has not been able to hold a councilmanic election since 1970, having been enjoined from holding said elections pending the resolution of this suit. Although councilmanic elections are required every two years by charter, all of the citizens of Richmond thus have been deprived of their right to vote in local elections. The decision of the District Court below places Appellant in a procedural morass in its efforts to comply with the Voting Rights Act of 1965. No election is possible in the foreseeable future. That Court's interpretation of the Act and of the decision in *City of Petersburg v. United States, supra,* have placed Appellant in the position of having no reasonable means of remedying any dilution in black



voting strength which may have been caused by the annexation. The citizens of Richmond, black and white, and the present Council, are thus in a "twilight zone" insofar as representative government is concerned. The legal consequences of the voting changes effected by the annexation, and Appellant's efforts to remedy any prohibited effect, are enmeshed in two lawsuits in two United States District Courts, in two different Districts, although two additional suits on the same issues have been concluded.

Determination of the issues involved is vital to the future for any city which may find itself in the position of Appellant. For the City of Richmond, the right of voter participation in the governmental process has been frustrated and is at stake.

### 1. The District Court Impermissibly Has Misconstrued and Rewritten Section 5 of the Voting Rights Act.

After this Court's affirmance of *Petersburg,* Appellant, in consultation with the Department of Justice, adopted a 9-Ward Plan, approved by the Attorney General, "calculated to neutralize to the extent possible any adverse affect upon the political participation of black voters." As a result of annexation, the black voting age population was reduced from 44.8% of the total to 37.3%. Voting age population is the limit on the number of citizens who can register and vote. It is the necessary measure of voting strength. *Zimmer v. McKeithen,* 467 F.2d 1381, 1384-1385 (5th Cir. 1972); *Moore v. Leflore County,* 361 F. Supp. 603, 607 (N.D. Miss. 1972).

The 44.8% of the voting population represented 4.03 seats on the nine member council prior to annexation. However, with the at-large voting procedure which prevailed, no seats were assured; if there were polarization by race, not one representative could have been elected by black voters. The 9-Ward Plan assures four seats to black voters, with a chance at five, which chance will increase in the future as black voting population increases. Even though no race has a constitutional right to elect one of their race, *Cherry v. New Hanover*, 489 F.2d 273, 274 (4th Cir. 1973)[3], four seats are here assured. This places the black voting population in a stronger position than prior to annexation. Appellant contends, joined by the United States, that the dilution of black voting strength is thus eliminated. The District Court, ignoring the realities of voting age population ratios, refused to accept the position of Appellant and the United States. It also ignored the fact that "legislators represent people not percentages of people." *Graves v. Barnes*, 343 F. Supp. 704, 713, fn. 5 (W.D. Tex. 1972), *aff'd and rev'd in part, sub nom., White v. Regester*, 412 U.S. 755.

In fact, de-annexation, suggested by the District Court below, would be retrogressive. It would return

[3]See *Cousins v. City Council of City of Chicago*, 466 F.2d 830, 843 (7th Cir. 1972), *cert. denied*, 409 U.S. 893:

> "... [T]here is no principle which requires a minority racial or ethnic group to have any particular voting strength reflected in the [city] council. The principle is that such strength must not be purposely minimized on account of their race or ethnic origin."



the City to its pre-annexation posture: at-large voting, with the black voting age population 44.8% of the total. Under this scheme, any bloc voting, by race, would foreclose any assurance that black voters could elect one representative. By refusing to consider voting age population, the District Court thus reached this anomalous conclusion.

The District Court attempted to distinguish the instant case from *Petersburg* by holding that the lack of discriminatory purpose in the annexation plan in *Petersburg* was a basis of that decision. *Petersburg*, however, held that, notwithstanding an absence of impermissible purpose, a diluting effect constituted a violation of the Act. 354 F. Supp. at 1027-1028. The District Court below concluded that, unlike *Petersburg*, when impermissible purpose is involved, "an extra burden rests on that city to purge itself of discriminatory taint as well as to show that the annexation will not have the prohibited effect." (App. B, p. 20).

The District Court below held that, to convince it that Appellant had "purged" itself of a discriminatory purpose, it must show (1) that the ward plan not only reduced, but effectively eliminated, the dilution of black voting strength and (2) that the City has some objectively verifiable legitimate purpose for annexation. (App. B, p. 20). Appellant contends that such dilution, as shown, has been effectively eliminated. Thus, the "extra burden" in fact necessitates more than elimination of dilution to the maximum extent reasonably possible, the *Petersburg* standard, and, indeed, more than effective elimination of dilution. Appellant is without guidance as to how far beyond effective

elimination, *i.e.*, four black seats, it must go to meet such an extra burden. If to do this requires an "over compensation" in order to insure more black seats on the council, the "to the extent possible" criterion from the *Petersburg* standard is effectively erased.[4]

Nowhere in the Act or in the cases interpreting that Act does such a requirement, *i.e.*, an extra burden because of impermissible purpose, appear. In reading it into the Act, the District Court below has, in spite of its protestation to the contrary, adopted the Master's contention that an impermissible purpose can never be cured.

Nowhere in the Act, or in the legislative history, is it even suggested that two distinct violations as to "purpose" and "effect" could occur or that these terms are anything other than means to the same end. If a change in voting practice has an impermissible effect, it is also prohibited. There is no indication that a different burden or sanction is required for showing absence of either purpose or effect. In every case the remedy is the same – a fairly drawn redistricting which meets constitutional requirements. *City of Petersburg v. United States, supra,* 354 F. Supp. at 1030-1031.

The District Court has rewritten the Act, as well as the decision in *Petersburg*. Further, because of its finding of impermissible purpose, it has left Appellant with an "extra burden", no standards or notions on

[4] " . . . [T]his annexation can be approved only on the condition that modifications calculated to neutralize *to the extent possible* any adverse affect upon the political participation of black voters are adopted, i.e., that the plaintiff [city] shift from an at-large to a ward system of electing its city councilmen." 354 F. Supp. at 1031 (emphasis added).



how to meet that burden, and with de-annexation put forward as the only remaining issue.

### 2. The District Court Found an Impermissible Annexation Purpose on the Same Record Upon Which the Fourth Circuit Court of Appeals Previously Had Reached an Opposite Conclusion.

The incidental and unintended effect of the City of Richmond's annexation of Chesterfield County, the dilution of black voting strength, is conceded here. *City of Petersburg v. United States, supra,* disposed of the notion that impermissible effects of an annexation could not be cured, thereby locking the city into its original boundaries, by holding that such was not the intent of Congress in enacting the Voting Rights Act. 354 F. Supp. at 1030.

The District Court below found an impermissible purpose in the annexation, in direct conflict with the decision of the Court of Appeals in *Holt I*. In doing so, that District Court made substantially the same findings, based on the same evidence, as were made by the District Court in *Holt I*. The findings of the District Court in *Holt I* were reversed by the Court of Appeals which held, on the same evidence upon which the Court in this case made its findings, that no impermissible purpose existed. In refusing to follow the determination of the Court of Appeals in *Holt I*, the District Court in this case, in effect, held that Section 5 requires a different standard and a different interpretation of the same evidence than does the Fifteenth Amendment.

The identical record and evidence, from *Holt I*, were before the District Court in this case. The determination of the *Holt I* Court was held by the District Court below in this Section 5 case, however, not to be binding upon it, despite the identical subject matter and similarity of the parties. On the identical record and evidence in *Holt I*, the District Court below found that impermissible purpose did exist (App. B, p. 16, fn. 43), whereas the Fourth Circuit Court of Appeals reached the opposite conclusion in the Fifteenth Amendment case, after a full hearing on the merits before the Virginia District Court. In this case, however, the only hearing on the merits, before the Special Master – not the Court itself – related to the appropriate ward plan to eliminate dilution of the black vote. Evidence as to the purpose of the annexation was stipulated from the *Holt I* record.

The Court cannot reach a conclusion as to the significance of the same evidence in a Section 5 case different from its significance in a Fifteenth Amendment case. They are one and the same. *South Carolina v. Katzenbach*, 383 U.S. 301, 326-327.

### 3. The District Court Improperly Claimed Authority to Effect De-Annexation and Referred That Remedy to a Virginia District Court in Another Suit.

The District Court below disagreed with the contention of Appellant and the United States that the Court did not have jurisdiction to order de-annexation. That Court held (Judge Jones dissenting) that it did



have jurisdiction to enjoin the annexation and order elections within the "old" city. The Court, however, refrained from so ordering. (App. B, pp. 36-38).

Instead, the District Court below, noting the pendancy of *Holt II* in the Virginia Federal District Court, stated that the latter Court could "better balance all relevant factors, including our refusal to grant Richmond a declaratory judgment, in deciding whether to order de-annexation." Appellee Holt (Intervenor below) therefore was left to "repair to the District Court in Virginia and obtain not only fair, but also more fully informed, consideration of his request for de-annexation." (App. B. p. 37).

Initially, the District Court below exceeded its jurisdiction in asserting power to order de-annexation. The jurisdiction of the District Court in the District of Columbia to hear and determine requests for declaratory judgments under Section 5 is limited by that section, which confers jurisdiction on that Court. Pursuant to the Act, the authority of that Court extends only to the declaration of whether the voting changes occasioned by the annexation, as amended by the 9-Ward Plan, have or do not have the purpose and effect of denying or abridging the right to vote on account of race or color. This principle was recognized in *Beer v. United States*, 374 F. Supp. 357, 361-362 (D.D.C. 1974). In this case, the proper issue under the Act was not what Richmond's boundaries should be, but whether the annexation, as modified by the 9-Ward Plan of election, had a proscribed purpose or effect. The District Court below, however, did "not assent to any language in the *Beer I* opinion" which suggested that jurisdiction was so limited. (App. B, p. 33).

The District Court below attempted to follow this Court's action in *Perkins v. Matthews*, 400 U.S. 379, 397, by remanding the case to a local Court for appropriate remedy. This Court may remand to a lower Court with instructions to formulate a remedy. The District Court for the District of Columbia cannot, on the authority of *Perkins*, pass its claimed jurisdiction to another three-judge District Court in Virginia. Thus, it is now left to the Virginia Court, in a suit brought by an intervenor, to decide upon the intervenor's request for de-annexation (App. B, p. 37).

**4. The District Court Improperly Required Richmond to Establish Economic and Administrative Benefits for the Annexation.**

The District Court below stated that, in meeting the extra burden placed upon it, Appellant must show that it had some objectively verifiable legitimate purpose for the annexation (App. B, p. 20). That Court adopted the Master's conclusions that Appellant "failed to establish any counter-balancing economic or administrative benefits of the annexation." The findings of the Master, adopted by the Court, relate to the economics of de-annexation and the comparative financial benefits of administering the annexed area.

Appellant and the United States contended, and still contend, that such findings, and the underlying evidence, are irrelevant to the issue before the District Court – whether the voting changes caused by annexation, amended by the 9-Ward Plan, resulted in an impermissible dilution of the black voting strength in



the city. This is a question of constitutional rights, upon which economic issues have no bearing. *Watson v. Memphis*, 373 U.S. 526, 537-538.

Appellant is not required by the Act to justify the annexation *per se*. The proper forum for that issue was the duly constituted Virginia annexation Court which ordered the annexation. If there were no legitimate purpose for the annexation, there would have been none. The annexation was accomplished by a three judge annexation Court acting pursuant to the laws of Virginia. The record of that proceeding, a part of the *Holt I* record, establishes beyond question the legitimate economic, governmental and administrative benefits of annexation. Further, the District Court in *Holt I* quoted the state Court to the effect that " 'The evidence overwhelmingly convinces us of the necessity for and the expediency of some annexation.' " 334 F. Supp. at 234, fn. 3.

These economic and administrative benefits of annexation have now been established before three different Courts. Indeed, this Court may take judicial notice of the necessity for expansion confronting our nation's cities today. In Virginia, this expansion can only be accomplished by a special annexation Court, as was done here.

The question before the District Court below, however, was not whether the annexation was a good one, or a bad one, for the City of Richmond. The question related to the changes in voting practices occasioned by the annexation, together with the 9-Ward voting plan. As stated by the Attorney General in the District Court below, a "good" annexation cannot make an impermissible change valid; a "bad" annexation

cannot make a permissible change, which eliminates any dilution in black voting strength, invalid.

Further, the Attorney General is given status, equal to that of the Courts, to pass upon voting changes under Section 5. Any such requirement that the economic and administrative aspects of annexations must be considered by him will place an insurmountable burden upon the Department of Justice. The Attorney General, through the Voting Rights Section of the Department of Justice, is an expert, indeed the *only* expert, in the area of voting rights. If, in order to fulfill the statutory duties under Section 5, the Attorney General must become an expert in annexations, and the economic, governmental and administrative aspects thereof, the jurisdiction of the Executive Branch will be vastly expanded.

Evidence of the economic aspects of annexation cannot be a basis of decision under Section 5. This has been the position of the Attorney General since the adoption of the Act. His interpretation of Section 5 is "entitled to deference". *City of Petersburg v. United States*, 354 F. Supp. 1021, 1031 (D.D.C. 1972), *aff'd*, 410 U.S. 962; *Perkins v. Matthews*, 400 U.S. 379, 390-391.

### 5. The District Court Improperly Ignored the Attorney General's Approval of Richmond's 9-Ward Plan.

In this case, after Appellant sought approval of its at-large voting system, the *Petersburg* case was affirmed by this Court. Appellant then, pursuant to that



decision, adopted its proposed 9-Ward Plan, after consultation with and suggestions from the Department of Justice. The Attorney General has approved the proposed plan, and supported the plan in the District Court as having no racial purpose or effect. The Act gives the Attorney General equal responsibility for an initial decision upon voting changes. In exercising that responsibility, he will refrain from objecting to a voting change only if he is satisfied that "the proposed change does not have a racially discriminatory purpose or effect." *Georgia v. United States*, 411 U.S. 526, 537.

The District Court below gave no weight to the Attorney General's interpretation, and, indeed, simply ignored it. The Attorney General, however, as noted above, is the only "expert" recognized by the Act.

### 6. *Holt I* Should Be Given Res Judicata and Collateral Estoppel Effect in This Case.

In *Holt I*, an action brought by Appellee Holt herein under the Fifteenth Amendment, the Court of Appeals held: "Under the circumstances, no violation of any Fifteenth Amendment right was worked by the annexation, effected, as it was, by the decree of the state court." *Holt v. City of Richmond*, 459 F.2d 1093, 1100 (4th Cir. 1972), *cert. denied*, 408 U.S. 931. This holding has been reversed by the District Court below.

The provisions of the Voting Rights Act only codify rights guaranteed by the Fifteenth Amendment. *South Carolina v. Katzenbach*, 383 U.S. 301, 326-327. The issues in the instant case were, therefore, subsumed in

the central issue in *Holt I* – whether *any* Fifteenth Amendment rights were violated.

The decision in *Holt I* should be given *res judicata* and collateral estoppel effect in the instant case. The class of citizens represented by Appellee Crusade is the same class represented by Holt, who was found in *Holt I* to be a proper representative of his class. The issues have already been determined. The policy of finality of judgments demands that these issues be held to have been determined once and for all.

As former Chief Justice Warren stated regarding *res judicata* and collateral estoppel:

> "...[U]nder the doctrine of *res judicata*, a judgment 'on the merits' in a proper suit involving the same parties or their privies bars a second suit based on the same cause of action. Under the doctrine of collateral estoppel, on the other hand, such a judgment precludes relitigation of issues actually litigated and determined in the prior suit, regardless of whether it was based on the same cause of action as the second suit...." *Lawler v. National Screen Service Corp.*, 349 U.S. 322, 326. *See also, Hoag v. New Jersey*, 356 U.S. 464, 470-471.

**7. Given *Allen v. State Board of Elections*, Incidental Voting Changes Resulting From a Legitimate Annexation Do Not Violate Section 5 of the Voting Rights Act.**

Any annexation by Appellant of surrounding territory would, in fact, dilute the black vote in the City. This was recognized by the Court in the initial proceeding in *Holt I*, 334 F. Supp. at 234. An increase



of voters resulting from a legitimate annexation cannot be considered "substantive discrimination". *Allen v. State Board of Elections*, 393 U.S. 544, 559. Unless the racial composition of the annexed area approximates that of the City, annexation inevitably will reduce the voting potential of one of the races.

However, the governing principle is that, where such dilution is an inevitable, incidential consequence of legislative or judicial action not addressed to voting, and is supported by substantial, legitimate governmental considerations, the dilution is not an effect of a changed voting procedure. It is, rather, a product of other, legitimate governmental action.

*Perkins v. Matthews*, 400 U.S. 379, 389, held that Section 5 was designed to cover changes having a "potential for racial discrimination in voting." This is a plain holding that such changes are covered. It does not answer the substantive question of whether the change was for the purpose of abridging the right to vote. If it did so imply, virtually every change in city land areas by annexation would be discouraged, if not effectively inhibited. It is difficult to conceive of any system, standard, practice or procedure which could not be thus challenged as discriminatory.

Whether the substantive question arises under Section 5 or the Fifteenth Amendment, it is the same–whether the purpose and effect of the change is to deny or dilute voting rights on the basis of race or color. In the instant case, the effect upon black voting strength was incidental to achieving different, legitimate governmental goals attainable only through annexation. Such an expansion should not be unlawful, whether it brings in more whites or more blacks.

While the "change" may be "covered" by Section 5, if *Allen* and *Perkins* are construed so as to prohibit this annexation, then every change must be so prohibited. *Allen* and *Perkins* should not be so applied.

## CONCLUSION

The District Court below erred in its construction and application of Section 5 of the Voting Rights Act. By leaving the possibility of holding elections to a three-judge United States District Court in Virginia, with the issue there being that of de-annexation (as requested by an intervenor in the instant case), the entire purpose of that Act also has been subverted.

As the District Court stated in *Graves v. Barnes, supra:*

> " . . . In ten years of wandering about this political thicket, we have not yet found the burning bush of final explanation . . . . We realize that there is no perfect electoral process, for democracy is at best a search for 'proximate solutions' to insoluble problems . . . . " 343 F. Supp. at 708.

This Court alone must decide the issues presented by this case. These questions should be decided now, without further enmeshing the Appellant in a pro-



cedural morass, which can only further prolong the postponement of elections by the Citizens of Richmond. Probable jurisdiction should be noted.

Respectfully submitted,

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## APPENDIX A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CITY OF RICHMOND, VIRGINIA,
*Plaintiff*

v.

UNITED STATES OF AMERICA and
RICHARD KLEINDIENST,
*Defendants*

and

CURTIS HOLT, SR. *et al.*

and

CRUSADE FOR VOTERS OF RICHMOND *et al.*,
*Defendant-Intervenors*

## JUDGMENT

This cause came on for hearing on the pleadings, the record made before the Master, the findings of the Master, and the record made before this court. After considering the briefs and the argument of counsel, and for the reasons stated in the opinion filed herein on May 29, 1974, it is



ORDERED by the court that the plaintiff's application for a declaratory judgment be, and it is hereby, denied.

/s/J. Skelly Wright
J. SKELLY WRIGHT
UNITED STATES CIRCUIT JUDGE

/s/William B. Jones
WILLIAM B. JONES
UNITED STATES DISTRICT JUDGE

/s/June L. Green
JUNE L. GREEN
UNITED STATES DISTRICT JUDGE

Washington, D. C.

June 5, 1974

FILED

JUN 6 1974

JAMES F. DAVEY, Clerk

## APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|---|---|---|
| CITY OF RICHMOND, VIRGINIA,<br>Plaintiff | ) | |
| v. | ) | Civil Action<br>No. 1718-72 |
| UNITED STATES OF AMERICA<br>and RICHARD KLEINDIENST,<br>Defendants | ) | |
| CURTIS HOLT, SR. *et al.* and<br>CRUSADE FOR VOTERS OF RICHMOND *et al.*, | ) | |
| Defendant Intervenors | ) | (Filed, May 29, 1974<br>–James F. Davey, Clerk) |

Charles S. Rhyne and David M. Dixon, Washington, D.C., and Daniel T. Balfour, Richmond, Virginia, for plaintiff.

Gerald W. Jones and Sidney R. Bixler, Attorneys, Department of Justice, for defendants.

W.H.C. Venable and John M. McCarthy, Richmond, Virginia, for defendant intervenors Curtis Holt, Sr. *et al.*

James P. Parker and Armand Derfner, Washington, D.C., for defendant intervenors Crusade for Voters of Richmond *et al.*

Before WRIGHT, Circuit Judge, and JONES and GREEN, District Judges.



WRIGHT, Circuit Judge: The City of Richmond, Virginia instituted this action seeking a declaratory judgment, pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §1973c (1970), that its annexation of approximately 23 square miles of adjacent county land does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.[1] Richmond

[1] Section 5, 42 U.S.C. §1973c (1970), provides:

§1973c. Alteration of voting qualifications and procedures; action by state or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court.

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard,

subsequently adopted a change in its method of electing its City Council from its previous at-large system to a nine-ward, single-member district plan. The City now requests that we approve under Section 5 the annexation as modified by this ward plan. Under rule 53(c) of the Federal Rules of Civil Procedure, we referred the case to a Master to hold a hearing and to take testimony on "whether the City of Richmond annexation plan as amended has the purpose or the effect of diluting the black vote in that City." The Master found that the City had failed to carry the burden imposed on it by Section 5 of proving that the annexation, even as modified, did not have such a discriminatory purpose or effect. We conclude that this finding, far from being "clearly erroneous,"[2] was compelled by the record before the Master. We therefore decline to grant Richmond the declaratory judgment it seeks.

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practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

[2] Rule 53(e)(2), *Fed. R. Civ. P.*, states: "In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous."



## I

Before discussing the Master's findings and the record in this case, we think it appropriate to delineate and stress the heavy responsibility placed on this court by Section 5 of the Voting Rights Act of 1965. The origin and meaning of Section 5 were eloquently and thoroughly set forth by Judge Robinson in *Beer v. United States*, *D. D.C.*, ___ F.Supp. ___ (Civil Action No. 1495-73, March 15, 1974). Judge Robinson's exposition, as well as several previous opinions of the Supreme Court,[3] make clear that our responsibility is no less than to ensure realization of the Fifteenth Amendment's promise of equal participation in our electoral process.[4] Although we need not retrace all of Judge Robinson's comprehensive analysis of the historical evolution of Section 5, in order to gain a full appreciation of our responsibility it is necessary to consider briefly the section's significance, especially as relevant to the expansion of urban boundaries in those states covered by the section.

In language tracked by Section 5, Section 1 of the Fifteenth Amendment proclaims that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." Since the post-Civil War enactment of the amendment, this language has been invoked to

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[3] *Georgia v. United States*, 411 U.S. 526 (1973); *Perkins v. Matthews*, 400 U.S. 379 (1971); *Allen v. State Board of Elections*, 393 U.S. 544 (1969); *South Carolina v. Katzenbach*, 383 U.S. 301 (1966).

[4] *See Allen v. State Board of Elections*, *supra* note 3, 393 U.S. at 556.

invalidate a host of devices and procedures designed by certain Southern states to deny the franchise to our nations's black citizens.[5] However, state legislatures desirous of abridging the voting rights of blacks proved themselves resilient and ingenious in erecting new obstructions to black voting. In 1957 Congress, employing the power vested in it by Section 2 of the Fifteenth Amendment "to enforce this [amendment] by appropriate legislation," authorized the Attorney General to seek injunctions against interference with the right to vote on racial grounds.[6] But the persistent state legislatures seemed able to avert even this power by delaying litigation and by turning to discriminatory devices not covered by the injunctions obtained.[7] Though Congress made further efforts in 1960 and 1964 to make accessible the electoral process to all Americans regardless of race, the impact on black voter registration was still not substantial.[8] In 1965 Congress acted again, this time with a "firm intention to rid the country of racial discrimination in voting" by "a complex scheme of stringent remedies."[9]

Section 5 of the 1965 Act, working in tandem with Section 4, is a central part of that scheme. Section 4

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[5]*See South Carolina v. Katzenbach, supra* note 3, 383 U.S. at 311-312.

[6]Pub. L. 85-315, § 131(b) & (c), 42 U.S.C. § 1971(a) & (c) (1970).

[7]*See South Carolina v. Katzenbach, supra* note 3, 383 U.S. at 313-314.

[8]*See* H.R. Rep. No. 439, 89th Cong., 1st Sess., 9-11 (1965).

[9]*South Carolina v. Katzenbach, supra* note 3, 383 U.S. at 315.



suspended use of any test or device[10] in determining eligibility to vote in states which were using a test or device in 1964 and where voter participation was below a minimum 50 per cent level in that year.[11] Section 5 protects the effectiveness of Section 4. To ensure that the covered states would not resort to the "stratagem of contriving new rules"[12] to evade efforts to secure blacks their rights to equal participation in the electoral process, this section effectively "freezes the election laws"[13] of states covered by Section 4. Before one of these states can administer any new "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting," it must obtain the approval of the Attorney General or a declaratory

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[10]The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

42 U.S.C. §1973b(c) (1970).

[11]The suspension covered a minimum period of five years as the Act was originally enacted in 1965. Pub. L. 89-110, Title 1, §4, 79 *Stat.* 438. However, a 1970 amendment extended the suspension period to 10 years. Pub. L. 91-284, §3, 42 U.S.C. §1973b(a). Section 4 was also amended to cover states or subdivisions of states which in 1968 employed a test or device and where voter participation was below 50% in that year. Pub. L. 91-285, § 4, 42 U.S.C. § 1973b(b).

[12]*South Carolina v. Katzenbach, supra* note 3, 383 U.S. at 335.

[13]*Georgia v. United States, supra* note 3, 411 U.S. at 538.

judgment from a three-judge District Court for the District of Columgia [sic] that the new practice or procedure (1) does not have the purpose and (2) will not have the effect of denying or abridging the right to vote on account of race or color.[14] As the Supreme Court has repeatedly made clear, Congress thus shifted the burden of proof in voting rights litigation on to the states,[15] requiring them to prove both the absence of a discriminatory purpose and the absence of a discriminatory effect before instituting new procedures which have any potential for abridging or denying voting rights of blacks.[16]

In *Allen v. State Board of Elections*, 393 U.S. 544 (1969), the Supreme Court determined that the "Voting Rights Act was aimed at the subtle, as well as the obvious," state schemes for denying voting rights and that Congress thus intended that the Act be given its "broadest possible scope."[17] In its next decision

[14]*See* note 1 *supra*.

[15]*Georgia v. United States*, *supra* note 3, 411 U.S. at 538: "It is well established that in a declaratory judgment action under §5, the plaintiff State has the burden of proof." *See also South Carolina v. Katzenbach*, *supra* note 3, 383 U.S. at 335; *City of Petersburg, Va. v. United States*, D. D.C., 354 F.Supp. 1021, 1027-1028 (1972), *affirmed*, 410 U.S. 962 (1973).

[16]The Supreme Court has characterized §5 as "an unusual, and in some aspects a severe, procedure for insuring that States would not discriminate on the basis of race in the enforcement of their voting laws." *Allen v. State Board of Elections*, *supra* note 3, 393 U.S. at 556. The Court did not hesitate, however, to uphold the section's constitutionality. *South Carolina v. Katzenbach*, *supra* note 3, 383 U.S. at 334-335.

[17]393 U.S. at 565, 567.



involving Section 5, *Perkins v. Matthews*, 400 U.S. 379 (1971), the Court held that a change in a city's boundary lines "which enlarge[s] the city's number of eligible voters also constitutes the change of a 'standard, practice, or procedure with respect to voting,'" and thus is covered by Section 5.[18] The *Perkins* Court reasoned that when a city expands its boundaries and adds new citizens to its voting rolls the votes of its old citizens are inevitably diluted. Quoting *Reynolds v. Sims*, 377 U.S. 533, 555 (1964), it stressed that "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise."[19] *Perkins* left implicit the obvious: If the proportion of blacks in the new citizenry from the annexed area is appreciably less than the proportion of blacks living within the city's old boundaries, and particularly if there is a history of racial bloc voting in the city, the voting power of black citizens as a class is diluted and thus abridged.[20]

[18]400 U.S. at 388.

[19]*Id. Perkins* also emphasized that the *Allen* Court had decided that the dilution of black voting power which could follow upon a change from a single-member district to an at-large election of county officials required that such a change be subjected to §5 scrutiny. *Id.* at 390. "The right to vote can be affected by a dilution of voting power as well as by an absolute prohibition on casting a ballot." *Allen v. State Board of Elections*, *supra* note 3, 393 U.S. at 569.

[20]This meaning of *Perkins* was assumed in *City of Petersburg, Va. v. United States*, *supra* note 15, 354 F.Supp. at 1024-1025.

In August 1965 it was determined that Virginia was one of the states covered by Section 4 and thus by Section 5.[21] It is therefore our responsibility under Section 5 to deny approval to Richmond's annexation of new voters unless Richmond can carry the burden of proving that the annexation, as modified by the ward plan, (1) does not have the purpose of abridging black voting power and (2) will not have such an effect. "This is a heavy burden for a community in a state with Virginia's history of past racial discrimination." *City of Petersburg, Va. v. United States*, D. D.C., 354 F. Supp. 1021, 1027 (1972), *affirmed*, 410 U.S. 962 (1973).

## II

With Richmond's burden of proof in mind, we turn to an examination of the Master's report and the facts of this case. The parties stipulated to the record in *Holt v. City of Richmond*, E.D. Va., 334 F.Supp. 228 (1971), *reversed*, 4 Cir., 459 F.2d 1093, *cert. denied*, 408 U.S. 931 (1972), a previous Fifteenth Amendment suit brought against the annexation,[22] and the Master based his findings on this record as well as on the three days of testimony before him. Most of the primary findings of fact from which the Master derived his ultimate finding that Richmond had failed to carry its burden of proving the annexation, as amended, was without discriminatory purpose and effect were not

[21] 30 FED. REG. 9897 (1965).

[22] *See* note 43 *infra*.



challenged by any of the parties.[23] We are thus able to set forth most of the history of the annexation for which Richmond seeks approval without direct reference to the record.

This history began in 1962 when the City filed an annexation suit against contiguous Chesterfield County seeking to obtain 51 square miles of territory.[24] This suit lay dormant for several years, during which time Richmond unsuccessfully attempted to annex land from another adjacent county.[25] It was settled in 1969 by compromise resulting in the annexation in suit of approximately 23 of the originally sought 51 square miles.[26] The period of the suit's dormancy witnessed a significant growth in black voting strength in Richmond. Blacks were rapidly becoming a majority of the population, and "[w]hile in 1968 there were more whites than Negroes registered to vote, about 50% of the registered Negroes voted as against approximately 30% of the white registered voters."[27] Racial bloc voting was evident and a black civic organization–intervenor Crusade for Voters–had gained substantial electoral power, rivaling its white counterpart–Richmond Forward. In the 1968 at-large City Council

[23] Intervenors Curtis Holt, Sr. and Crusade for Voters were allowed to participate in this action as representatives of the black community.

[24] Master's Findings of Facts, No. 2.

[25] *Holt v. City of Richmond*, E.D. Va., 334 F.Supp. 228, 231 (1971).

[26] Master's Findings of Facts, No. 3.

[27] *Holt v. City of Richmond, supra* note 25, 334 F.Supp. at 232.

elections, Crusade-endorsed candidates won three of the nine Council seats from Richmond Forward endorsees.[28] The Master's findings indicate that these developments caused the Richmond white political leadership great concern that the black voting bloc would be able to elect a majority to the City Council in the 1970 elections. The Richmond mayor, white incumbent city councilmen, the city attorney, and other representatives of the City and its white political leadership expressed their sentiments to Chesterfield County officials, to a state commission studying Richmond's expansion, and to residents of the City. These expressions reflected a conviction that annexation of part of Chesterfield County was necessary to keep the black population from gaining control of the city in the 1970 elections.[29]

[28]Defendants' Exhibit 8.

[29]The Master set forth in his unchallenged Finding of Fact No. 6:

> 6. During the course of the annexation proceedings and thereafter, various City officials made statements on the annexation as follows:
>
> (a) About 1966, at Farmville, Virginia, City Councilman James Wheat stated that the City of Richmond needed 44,000 leadership-type white affluent people.
>
> * * * *
>
> (b) Between July 16, 1968 and September 12, 1968, Alan F. Kiepper, Richmond City Manager, and Melvin W. Burnett, Executive Secretary of the Board of Supervisors of Chesterfield County, met to negotiate the pending annexation suit. At those meetings, the only consideration stated by Mr. Kiepper was the number of white people and black people in the area to be annexed.
>
> * * * *



Further unchallenged findings of the Master on the record before him strongly suggest that this conviction motivated Richmond's negotiation and acceptance of the 1969 annexation suit settlement agreement for which it now seeks Section 5 approval. The 1969 annexation negotiations with Chesterfield County were conducted for Richmond by its white mayor-city councilman, Phil J. Bagley. During the course of these negotiations, Mayor Bagley held meetings and con-

> (c) At a meeting in Williamsburg, Virginia, about March of 1969, City Attorney Conrad B. Mattox, Mayor Crowe, and Phil J. Bagley indicated to Irvin G. Horner, Chairman of the Board of Supervisors of Chesterfield County, that the City must annex a part of Chesterfield County or the City of Richmond would be taken over by the black population.
>
> * * * *
>
> (d) At a meeting of the Aldhiser Commission (created by the State Legislature to study the City's expansion) in July, 1968, Ed Willey and others representing the City of Richmond, said to Donald G. Pendleton, member of the House of Delegates, that the City was concerned about results of the 1970 City of Richmond Council races going all black.
>
> * * * *
>
> (e) In the fall of 1968, at a meeting with Leland Bassett at Charlottesville, Virginia, Mayor Bagley stated that "As long as I am the Mayor of the City of Richmond the niggers won't take over this town."
>
> * * * *
>
> (f) In February 1970, at the Willow Oaks Country Club, Henry Valentine of Richmond Forward, stated that the purpose of the annexation was to keep the City from going all black. City Councilman Nathan Forb was concerned about Richmond becoming another Washington, D. C.
>
> * * * *
>
> (g) On September 12, 1971, at a meeting of the Virginia Municipal League, Mayor Bagley stated to James G. Carpenter that niggers are not qualified to run the city.

ferences concerning their progress with the other five members of the Richmond City Council whose election had been endorsed by Richmond Forward, the predominantly white citizens group; the three members of the Council who had been endorsed by Crusade for Voters, the predominantly black citizens organization, were excluded from all of these meetings.[30]

Richmond's focus in the negotiations was upon the number of new white voters it could obtain by annexation; it expressed no interest in economic or geographic considerations such as tax revenues, vacant land, utilities, or schools.[31] The mayor required assurances from Chesterfield County officials that at least 44,000 additional white citizens would be obtained by the City before he would agree upon settlement of the annexation suit.[32] And the mayor and one of the city councilmen conditioned final acceptance of the settlement agreement on the annexation going into effect in sufficient time to make citizens in the annexed area eligible to vote in the City Council elections of 1970.[33] The annexation suit settlement to which the six Richmond Forward-backed members of the City Council agreed obtained for Richmond 60 per cent of the total population and 59 per cent of the school-age children, but only 51 per cent of the value of tax assessable property and 46 per cent of the total land area, of the original portion of Chesterfield County for which annexation was sought.[34]

[30]Master's Findings of Facts, No. 5.

[31]*Id.*, No. 4.

[32]*Id.*

[33]*Id.*, No. 9.

[34]*Id.*, No. 7.



The annexation seemed to have the impact the Richmond officials who supported it desired. The 1970 census revealed that the black population within the old boundaries of Richmond was 52 per cent, but within the expanded boundaries it was only 42 per cent.[35] The white citizenry was increased by the annexation by 45,705, while the black citizenry was increased by only 1,557.[36] The 1970 councilmanic elections were held on an at-large basis with the annexed Chesterfield County citizens participating. Candidates endorsed by the white citizens organization maintained their 6-3 majority on the City Council and only one black councilman was elected. None of the six elected councilmen who were endorsed by the white citizens organization received more than 8.4 per cent of the black vote.[37]

It is conceded here that Richmond conducted these elections illegally in violation of Section 5. It did not, prior to diluting by annexation the votes of the citizens residing within the old Richmond boundaries, obtain the approval of the Attorney General or a declaratory judgment from this court that this dilution did not have the purpose and would not have the effect of abridging the right to vote on account of race or color.[38] Richmond has held no councilmanic elections since 1970;[39] the illegally elected City Council continues to

[35]*Id.*, Nos. 10 & 11.

[36]*Id.*, No. 11.

[37]Defendants' Exhibit 9.

[38]*See* text at notes 12-21 *supra*.

[39]The 1972 City Council elections were enjoined by the Supreme Court under §5. *Holt v. City of Richmond*, 406 U.S. 903 (1972). Richmond is presently enjoined from holding any elections under an order of a three-judge District Court in Virginia.

serve to this time. It was only after the decision in *Perkins v. Matthews, supra,* and after the Attorney General had informed Richmond that it was in violation of the Voting Rights Act, that the City made its belated attempts to conform to the commands of Section 5. On March 8, 1971 Richmond submitted the annexation and the concomitant changes in its election practices to the Attorney General. On May 7, 1971 the Attorney General interposed an objection to the election practice changes resulting from the annexation. On December 9, 1971 Curtis Holt, Sr., a black citizen living within the old Richmond boundaries and an intervenor in the case at bar, filed an action in the District Court for the Eastern District of Virginia seeking a judgment that the annexation was without effect for lack of prior approval by the Attorney General or this court.[40] On August 25, 1972, five days prior to a scheduled hearing in this Virginia District Court case,[41] more than a year after the Attorney General objected to the annexation under Section 5, and almost two years after it had conducted its 1970 councilmanic elections in violation of Section 5, the City finally filed the instant suit in this court.

As originally filed, this suit asked us to declare nondiscriminatory in purpose and effect the annexation and concomitant changes in election practices as

[40]Holt's standing to bring such an action had been affirmed by the Supreme Court in *Allen v. State Board of Elections, supra* note 3, 393 U.S. at 554-557.

[41]Holt's §5 case was brought independently of his earlier direct 15th Amendment challenge to the annexation. *See* text at note 22 *supra* and note 43 *infra.*



instituted in 1970. It could hardly be clearer that on the Master's unchallenged and fully supported factual findings we could not have issued such a declaration. The City apparently was moved in 1962 to file its annexation suit against Chesterfield County by legitimate goals of urban expansion.[42] However, Richmond, which we again emphasize must carry under Section 5 the heavy burden of proving the absence of a discriminatory purpose as well as the absence of a discriminatory effect, offered no evidence to explain why the suit was settled in 1969 by negotiations focusing on the number of white citizens the City would obtain and after the City's controlling white officials had stated that the annexation was necessary in 1969 to avert a black political takeover of the City.[43]

[42]*See Holt v. City of Richmond, supra* note 25, 334 F.Supp. at 231.

[43]We are not, contrary to the City's arguments, precluded from finding that Richmond failed to prove the absence of a discriminatory purpose in negotiating the 1969 annexation by the decision of the 4th Circuit in *Holt v. City of Richmond,* 459 F.2d 1093, *cert. denied,* 408 U.S. 931 (1972), *reversing* E.D. Va., 334 F.Supp. 228 (1971). The *Holt* court reversed a District Court decision that the 1969 annexation compromise violated the 15th Amendment because of a discriminatory motivation. However, the 4th Circuit predicated its reversal on a line of Supreme Court cases holding that actions of legislatures are to be voided for unconstitutional motivation only in the rarest instances after the most convincing showing that the legislators could not have had legitimate goals. 459 F.2d at 1097-1100. *Compare Gomillion v. Lightfoot,* 364 U.S. 339 (1960), *with Palmer v. Thompson,* 403 U.S. 217, 224-225 (1971); *United States v. O'Brien,* 391 U.S. 367, 382-386 (1968); *Fletcher v. Peck,* 10 U.S. (6 Cranch) 87, 130 (1810). The *Holt* court found that plaintiff Holt in that case had not carried such a heavy

In addition, given the Master's unchallenged finding that there was uncontroverted evidence of racial bloc voting in Richmond and the fact that almost all of the annexed citizens were white, we cannot say that the expansion of Richmond's boundaries and the concomitant changes in its election practices instituted in the 1970 councilmanic elections did not have the effect, as well as the purpose, of diluting the black vote.

We conclude, then, that Richmond's 1970 changes in its election practices following upon the annexation were discriminatory in purpose and effect and thus violative of Section 5's substantive standards as well as the section's procedural command that prior approval be obtained from the Attorney General or this court. The primary thrust of Richmond's present arguments before this court, however, is that any discriminatory purpose and effect of the annexation was purged by the City's adoption, on April 25, 1973, of a single-member district, nine-ward plan for future councilmanic elections. Richmond amended its complaint in this action and now asks us to declare that the changes in its election practices resulting from the annexation as modified by the ward plan do not have a discriminatory purpose or effect. The City thus directs its attack on

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burden of proof. This case is not brought directly under the 15th Amendment and is not controlled by the constitutional cases cited by the *Holt* court. As stated above, the Supreme Court has made clear that in a §5 declaratory judgment suit the state must carry the burden of proof that it did not have a discriminatory purpose. Indeed the 4th Circuit, like the District Court it reversed, fully understood that its decision had no effect whatever on the determination we must make under §5. 459 F.2d at 1100; 334 F.Supp. at 242.



the finding in the Master's report that the ward plan does not remove the discriminatory taint from the annexation.

Richmond undertook to develop a ward plan after the decision in *City of Petersburg, Va. v. United States, supra*, and it now relies on *Petersburg* to argue that the annexation was made lawful by the adoption of its single-member district plan. The *Petersburg* court was asked to approve under Section 5 an annexation which eliminated a black population majority in Petersburg. In light of evidence of a history of voting along racial lines in Petersburg, the court held that the City could not prove that its submitted annexation plan would not have the effect of diluting black votes. However, emphasizing the legitimate financial and geographic interests of Petersburg in the annexation *and the absence of any evidence that the annexation was accomplished for the purpose of diluting black voting power,*[44] the court suggested that if the City changed from an at-large system for electing its city council to a ward system "calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters,"[45] the annexation could pass Section 5 scrutiny.

The Master concluded that Richmond did not, under *Petersburg*, purge its annexation of illegality by its

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[44]The court specifically found that the City "expanded into those areas which were the most reasonably available and which were the most desirable for accomplishing the legitimate purposes of annexation." *City of Petersburg, Va. v. United States, supra* note 15, 354 F.Supp. at 1024.

[45]*Id.* at 1031.

adoption of a ward plan. We agree for two reasons. First, initially we find this case distinguishable from *Petersburg* in one significant respect: Richmond, unlike Petersburg, has not proved that it did not expand its boundaries for the *purpose* of abridging the voting rights of its black citizens. Second, we cannot, in any case, find that the *Petersburg* standard as to effect has been met by Richmond. We are not conviced that the ward plan adopted by Richmond was "calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters."

We will address first the importance of Richmond's failure to prove, as Petersburg did, that its annexation did not have a discriminatory purpose. We do not agree with the Master's conclusion that a city which has originally annexed territory for the purpose of maintaining a white voting majority could never prove that it no longer had such a discriminatory purpose in retaining the annexed area after adoption of a single-member district ward plan. However, we also do not agree with Richmond that a city's mere showing that it has made some effort to remove the discriminatory effect of an annexation by adoption of a ward plan is sufficient to prove that it does not retain the annexed voters for a discriminatory purpose. We realize that cities with histories of racial discrimination and bloc voting in states covered by Sections 4 and 5, even cities in which the number of black citizens is approaching a majority, may have legitimate economic reasons for desiring to expand their boundaries into surrounding areas which coincidentally contain many more white than black citizens. We think that when such a city demonstrates that its boundary expansion is



not motivated by a desire to dilute black voting power, a ward plan calculated to minimize any dilution that could occur should, as stated in *Petersburg*, save the annexation from illegality under Section 5. However, when such a city violates the Voting Rights Act by proceeding, without approval of the Attorney General or this court, with annexation of a large number of white citizens for the purpose of diluting the vote of its black citizens, an extra burden rests on that city to purge itself of discriminatory taint as well as to show that the annexation will not have the prohibited effect. To convince a court that such a city, by adoption of a ward plan, has purged itself of a discriminatory purpose in an annexation of new voters, it would have to be demonstrated by substantial evidence (1) that the ward plan not only reduced, but also effectively eliminated, the dilution of black voting power caused by the annexation,[46] and (2) that the city has some objectively verifiable, legitimate purpose for annexation.

In this case Richmond has failed to present substantial evidence that its original discriminatory purpose did not survive adoption of the ward paln. The Master concluded that the "City has failed to establish any counterbalancing economic or administrative benefits of the annexation."[47] The Master's conclusion

[46]The *Petersburg* court was fully aware that the "calculated to neutralize to the extent possible" standard which it established for annexations not motivated by a discriminatory purpose requires a city to minimize but not necessarily to remove entirely any dilution of black voting power caused by the annexation. *Id.* at 1031.

[47]Master's Conclusions of Law, No. 17.

was predicated upon findings of fact supported by direct testimony before him. The Master further found that the return of the annexed area to Chesterfield County would actually save the City at least $8.5 million of operating loss per year and $21.3 million of required capital outlay. The Master also found that only 6.25 per cent of the vacant land received by Richmond in the settlement annexation was capable of development.[48] He further concluded from the testimony of a Chesterfield County official that the County is not only financially and administratively able and willing to reassume control over the annexed area and to reimburse the City for its previous expenditures in the area, but could do so without any significant inconvenience to or detrimental effect on the annexed citizens.[49] Richmond did not offer any testimony before the Master to controvert these findings. It objects, however, to the Master's conclusion that there are no economic or administrative reasons to retain the annexed area on the basis of the record and decision in *Holt v. City of Richmond, supra.* The City cites from this record an estimate that revenues from the annexed area for fiscal year 1971-72 exceeded appropriations from it by about $1.5 million. Richmond further quotes a portion of the *Holt* decision containing the opinion of the Richmond City Manager that deannexation would be a job to "boggle the mind" and the opinion of the *Holt* court that Richmond would be in a weak bargaining position in any de-annexation negotia-

[48]Master's Findings of Facts, No. 26.

[49]*Id.*, Nos. 23-25.



tions.[50] These evidentiary references to *Holt* were, of course, considered by the Master in making his findings.[51] They do not persuade us that the Master's findings are wrong, nor do they dissipate the evidence of illegal purpose which permeates this record.[52]

[50]324 F.Supp. at 238-239. Intervenor Crusade for Voters argues that the addition of white children from the annexation would aid school desegregation efforts in Richmond. We take note of *Bradley v. School Board of City of Richmond, Va.*, 4 Cir., 462 F.2d 1058 (1972), *affirmed by equally divided Court*, 412 U.S. 92 (1973), which held that the 14th Amendment did not require Richmond to merge its school system with those of surrounding Henrico and Chesterfield Counties in order to effect full integration of these school systems. However, the history of Richmond's resistance to the mandate of *Brown v. Board of Education*, 347 U.S. 483 (1954), *see Bradley v. School Board of City of Richmond, Va., supra*, at 1074-1076 (Winter, J., dissenting), causes us to doubt that Richmond's white leadership has at any time been motivated by the cause of school desegregation to maintain the expansion of Richmond's boundaries.

[51]Richmond also refers the court to a study by the Urban Institute showing a 1971 fiscal year surplus from the annexed area. This study was not made part of the record before the Master, however, *see* Transcript of Master's Hearing (hereinafter Tr.) 606-607, and it could not in any case remove the doubts created by testimony at the hearing.

[52]We emphasize again that we do not doubt that Richmond's leadership was motivated in 1962 by nondiscriminatory goals in filing its 1962 annexation suit. We simply question that the City has established benign purposes for retaining the particular 1969 compromise annexation negotiated for the purpose of diluting black voting power.

Moreover, because the City has failed to demonstrate that its ward plan effectively removes the dilution of black voting power caused by the annexation, even if we were convinced that Richmond now has legitimate reasons for annexation and for resisting de-annexation, we would still not be convinced that the City's discriminatory purpose does not linger. The City maintains that its ward plan actually enhances black voting power in Richmond. The single-member districting plan adopted by the City includes four wards with heavy white population majorities, four wards with heavy black population majorities, and one ward which is 40.9 per cent black.[53] Richmond contends that this plan assures the black citizenry of four seats on the Council and at least gives them some hope of capturing a fifth seat. Richmond argues that this is more political power than blacks could have in an at-large system within Richmond's old boundaries because, while blacks have a population majority within these boundaries, they still comprise only 44.8 per cent of the voting-age population. Although Richmond's argument has considerable force on its surface, we are not convinced by it that Richmond's ward system sufficiently compensates for the dilution of black voting power caused by the annexation.

First, we think it our responsibility under Section 5 to thwart attempts of covered states to dilute the potential future voting power of black citizens as well as their present voting strength. The fact that the percentage of Richmond blacks of voting age is appreciably less than the percentage of blacks in the

[53]Attachment to plaintiff's Exhibit 18; Tr. at 615.



total population of course means that there are proportionately more black youngsters. We, like the white political leadership of Richmond, can anticipate that the present black population majority within Richmond's old boundaries will translate in a few years into a voting-age majority.[54] In an at-large system such a majority would ensure that none of the nine City Council seats was occupied by a candidate who appealed only to a white voting bloc, ignoring the needs and aspirations of Richmond's black citizens. The unchallenged findings of the Master indicate that the Richmond white political leadership in the late 1960's feared that absent annexation the black population would gain an electoral majority some time in the 1970's. We cannot say, in light of population growth trends in Richmond, that the Richmond City Council was not still motivated by that fear in adopting a ward plan to avoid de-annexation.[55]

[54]The population figures on which Richmond relies are taken from the 1970 census results. Translation of the population majority into a voting-age majority may have already occurred.

[55]Richmond has not suggested to us that we focus on the percentage of registered voters who are black. To do so would of course be circular; a primary reason why black registration has been low relative to that of whites is the black citizen's awareness that his vote has traditionally had less impact. *Cf. Zimmer v. McKeithen*, 5 Cir., 485 F.2d 1297, 1306 (1973) (*en banc*); *Beer v. United States*, D. D.C., ___ F.Supp. ___, ___ (Civil Action No. 1495-73, March 15, 1974) (slip op. at 70-71). The Voting Rights Act was enacted to render a future transformation in the reality on which that black awareness was based. In stressing the total black population percentage, we look toward that future transformation.

Second, it is not clear to us that Richmond's black citizenry would not have greater actual political power in an at-large, de-annexed system than in a single-member ward, annexed system even before their overall population majority resulted in a voting-age majority.[56] The Master's findings on the concerns of the City's white leadership, as well as testimony of the black Richmond leadership before the Master,[57] suggest that

[56]We must look beyond percentages, whether they be of total populations or of voting-age populations, to determine the effect of the boundary expansion on the voting power of blacks and their access to the political process. As the 5th Circuit has recently stated:

> * * * Inherent in the concept of fair representation are two propositions: first, that in apportionment schemes, one man's vote should equal another man's vote as nearly as practicable; and second, that assuming substantial equality, the scheme must not operate to minimize or cancel out the voting strength of racial elements of the voting population. Both the Supreme Court and this court have long differentiated between these two propositions. And although population is the proper measure of equality in apportionment, in Whitcomb v. Chavis, 403 U.S. 124, 149-150, 91 S.Ct. 1858, 29 L.Ed.2d 363 (1971) and White v. Regester, *supra*, 412 U.S. at 765, 93 S.Ct. at 2339, 37 L.Ed.2d at 324, the Supreme Court announced that access to the political process and not population was the barometer of dilution of minority voting strength.

*Zimmer v. McKeithen, supra* note 55, 485 F.2d at 1303 (footnotes omitted). In *Georgia v. United States, supra* note 3, 411 U.S. at 531, the Supreme Court admonished that §5 is concerned "with the reality of changed practices as they affect Negro voters."

[57]Tr. at 617-618.



political power in Richmond turns on controlling five majority seats on the City Council[58]; three or even four seats provide forums from which to voice dissents, but not to wield effective power. There is good reason to think that blacks would have a greater opportunity to elect five councilmen responsive to their concerns and interests in an at-large system within Richmond's old boundaries than in a ward system operating within the expanded boundaries.

We note that, because past recent voting has only been roughly along racial lines, three councilmen who have predominantly appealed to black voters were elected in 1970 in the face of a black voting-age minority of 37.3 per cent.[59] If the black voting-age minority was increased by de-annexation to 44.8 per cent, two or more additional candidates who appealed to black voters might well be elected. The potential for this happening may be greater than the potential for election of a fifth black voting bloc-supported councilman from what the City has characterized as the "swing ward" in their ward system. For though the City stresses a 40.9 per cent overall black population percentage in this ward, the black voting-age population is only 38.5 per cent.[60] Since substantial doubt exists that the dilution of the black vote caused by the annexation was eliminated by adoption of the ward plan,[61] it appears that the white political leadership

[58]The mayor has been elected from and by the City Council.

[59]Tr. at 219.

[60]Tr. at 616.

[61]Because of our understanding of the political importance of obtaining a majority on the City Council, we have not included

presently in control of Richmond adopted the ward system for the purpose of doing what they could to maintain the dilution of the black vote produced by annexation. Richmond did not carry the heavy burden we think must be imposed on a city which argues that adoption of a single-member district ward plan purges its discriminatory purpose in annexing white citizens.[62]

In addition to a discriminatory purpose, the annexation also had a discriminatory effect under the

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in our analysis the effect of the annexation on the black voting bloc's influence on the election of the City's five "constitutional" officers: Commonwealth's attorney, city treasurer, commissioner of revenue, sheriff, and clerk of court. These officers, whose positions are provided for in the Virginia Constitution, *see* Art. VII, §4 (1973); *see also* VA. CODE §15.1-40.1 (1973), are of necessity elected on an at-large basis. Thus with respect to these officers the ward system does nothing to counteract the dilution of the black vote caused by the annexation. *See generally City of Petersburg, Va. v. United States, supra* note 15, 354 F.Supp. at 1029-1030.

[62]The above discussion of our doubts that Richmond's ward plan eliminated the dilution of black voting power caused by the annexation renders academic Richmond's claim that when a state or subdivision demonstrates that a change in a practice or procedure has no discriminatory effect the absence of a discriminatory purpose should be presumed under §5. We pause, however, to register our firm disagreement with Richmond's position. Section 5 requires the state to carry the burden of proof on two interrelated but independent issues: (1) whether there will be a discriminatory effect, and (2) whether there was a discriminatory purpose. *See, e.g., City of Petersburg, Va. v. United States, supra* note 15, 354 F.Supp. at 1027. Carrying the burden on the first issue cannot reverse the burden on the second.



*Petersburg* standard since the ward plan was not "calculated to neutralize to the extent possible any adverse effect upon the participation of black voters." The Master did not find, and indeed on the basis of the evidence before him could not find, that Richmond fashioned its ward plan "to neutralize to the extent possible" the dilution of black voting power caused by the annexation.[63] As found by the Master on the basis of undisputed testimony before him, Richmond's ward plan was drawn by Dallas H. Oslin, senior planner for the City, without reference to the racial living patterns in Richmond. Oslin, a lone-wolf worker, testified before the Master that the only direction he received from the City was to keep the wards within a four to five per cent variance from population equality[64] and that he did not even know, beyond rough impressions, the locations of Richmond's black population.[65] Oslin framed the ward plan on the basis of factors such as

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[63]Richmond seems to interpret *Petersburg* to mean that, where a city elects its city council under a ward system, any expansion of its boundaries can defeat a §5 challenge. This interpretation not only is contradicted by the plain language of *Petersburg*, requiring the city to "neutralize *to the extent possible* any adverse effect upon the political participation of black voters," 354 F.Supp. at 1031 (emphasis added), but also collapses under simple analysis. For if Richmond's position were adopted, the incumbent white political leadership of a city which already elected its councilmen under a single-member district ward system could, without running afoul of §5, selectively annex as many additional white wards as it anticipated it needed to maintain the city's white political predominance. Surely Congress did not intend §5's "severe *** procedure for insuring that States would not discriminate on the basis of race in the enforcement of their voting laws," *Allen v. State Board of Elections, supra* note 3, 393 U.S. at 556, to be so easily circumvented.

[64]Tr. at 293-294.

[65]Tr. at 306-308.

"compactness," "physical boundaries," and "likeness of area."[66] While Richmond could have legitimately taken these factors into account, they should have been accommodated to the goal of minimizing dilution of the black vote.[67]

Our conclusion that the City's ward plan does not "to the extent possible" minimize dilution of the black vote is further buttressed by an alternative ward plan developed and submitted to the court by intervenor Crusade for Voters. The Crusade plan provides for four heavily white wards, four heavily black wards, and a "swing ward" with a 47.8 per cent black population.[68] Since this "swing ward," much more than the 40.9 per cent black "swing ward" in the City's plan, provides a

[66]Master's Findings of Facts, No. 19.

[67]Without reference to racial living patterns, Oslin drew four ward plans which were submitted to the Attorney General during the pendency of this suit. The Attorney General notified Richmond that if it made some minor modifications in one of these ward plans it would meet the *Petersburg* standard. It is this ward plan as modified in accordance with the Attorney General's suggestion which the City adopted and submits to us.

[68]Attachment to Exhibit 21 of defendant-intervenor Crusade for Voters. Crusade asks that we approve the City's annexation as modified by Crusade's ward plan. Our special function under §5, however, is to approve practices and procedures with respect to voting submitted by covered states or their subdivisions. Richmond has not adopted or submitted Crusade's plan. Though the effect of a plan may be anticipated in advance of its adoption, *cf. City of Petersburg, Va. v. United States, supra* note 15, we cannot give full consideration to whether a city has a discriminatory purpose in adopting a plan before it actually does so.



candidate supported by blacks an opportunity to be elected to the critical fifth seat on the City Council, Crusade's plan suggests that the City could have done more to compensate for the dilution of black voting power caused by the annexation. Thus even if Richmond had placed this case in the posture of *Petersburg* by proving the absence of any discriminatory purpose, it would still be an abuse of the heavy responsibility placed upon us by Section 5 to grant the declaratory judgment the City seeks.

## III

Our denial of Richmond's request for a declaratory judgment does not end this case for intervenor Holt, nor did it end the case for the Master. Holt requests and the Master recommends that this court enjoin Richmond to de-annex the land obtained from Chesterfield County in order that a new councilmanic election can be immediately held within the old boundaries of Richmond.[69]

There are indeed strong equities in favor of such an injunction. Since those individuals who were annexed by Richmond must be permitted to be full voting citizens of the community in which they reside, a Richmond election which denied these individuals the

[69]The Master properly titled his recommendation of a de-annexation order a conclusion of law. As such, we need not give it the deference of the "clearly erroneous" standard appropriate under Rule 53(e) for findings of fact. *See* note 2 *supra*.

vote would require de-annexation.[70] Yet the citizens of Richmond living within the old boundaries can voice a strong claim for the immediate conduct of an election within the old boundaries to remove the present City Council. These citizens have not had an opportunity since 1968 to cast a ballot in an election which was not violative of the 1965 Voting Rights Act. The present City Council was elected in the 1970 elections and serves today several years after Richmond was notified that these elections were held in violation of Section 5. The 1970 elections were illegal because they were conducted pursuant to a change in a practice or procedure of voting without approval being obtained from this court or the Attorney General. Our denial of Richmond's request for *ex post facto* approval of its 1970 change in election practices underscores the illegality of these elections. The Supreme Court has stated that Section 5

> essentially freezes the election laws of the covered States unless a declaratory judgment is obtained in the District Court for the District of Columbia holding that a proposed change is without discriminatory purpose or effect.* * *

*Georgia v. United States*, 411 U.S. 526, 538 (1973).[71] For four years now Richmond has avoided this

[70]*See Holt v. City of Richmond, supra* note 25, 334 F.Supp. at 239.

[71]*See also* Joint Views of 10 Members of the [Senate] Judiciary Committee Relating to Extension of the Voting Rights Act of 1965, 116 CONG. REC. (Part 4) 5517, 5519 (March 2, 1970), *quoted* in *City of Petersburg, Va. v. United States, supra* note 15, 354 F.Supp. at 1028.



intended "freezing" effect; intervenor Holt asks only that we return Richmond to the position it would be in today had it followed the procedures of Section 5 in accordance with congressional intent.[72]

The City of Richmond and the Attorney General argue that, whatever the equities, this court does not have jurisdiction to order de-annexation. We disagree. Richmond and the Attorney General base their argument on the first opinion in *Beer v. United States*, D. D.C., ___ F.Supp. ___ (Civil Action No. 1495-73, January 4, 1974) (hereinafter *Beer I*). The *Beer I* court was asked by the City of New Orleans, Louisiana to declare nondiscriminatory in purpose and effect a plan of redistricting for councilmanic elections. New Orleans had not held elections under the new plan for which it sought approval. Several nonincumbent candidates for the City Council in New Orleans petitioned the *Beer I* court, during its consideration of New Orleans' request, to establish a schedule for councilmanic elections. The court refused to consider the merits of the candidates' petition, stating that it was without power to grant the relief requested.

[72]Words from *Perkins v. Matthews, supra* note 3, also reverberate loudly against Richmond's evasion of §5's intent:

> * * * [B]ased upon ample proof of repeated evasion of court decrees and of extended litigation designed to delay the implementation of federal constitutional rights, Congress expressly indicated its intention [in enacting §5] that the States and subdivisions, rather than citizens seeking to exercise their rights, bear the burden of delays in litigation.

400 U.S. at 396 (footnote omitted).

We think the *Beer I* case distinguishable on its facts. We are asked merely to employ our equitable power to enforce the mandate of Section 5 that election procedures be frozen in covered states until a declaratory judgment of approval has been obtained from this court. We are asked to declare void and remove the effects of those procedures and practices which were not to be implemented without the approval of this court—an approval which we herein deny. The *Beer I* court, which was not presented as are we with the *fait accompli* of a past election held under illegal practices and procedures, itself enjoined future elections under New Orleans' unapproved redistricting plan.[73] The *Beer I* court only balked when it was asked to schedule local councilmanic elections and thus to probe issues "tangential"[74] to the command of Section 5 that election practices and procedures not be changed without prior approval.

We do not assent to any language in the *Beer I* opinion which does suggest that this court has jurisdiction only to grant or deny a declaratory judgment sought by a covered state or its subdivision. Such a limitation on our power would remove from us "the broad equitable jurisdiction that inheres in courts" to give effect to the policy of the legislature which they oversee, *Porter v. Warner Holding Co.*, 328 U.S. 395,

[73]The *Petersburg* court, also not confronted by the effects of an already conducted illegal election, issued a similar injunction, restraining Petersburg from holding any elections within its expanded boundaries before §5 approval for the annexation was obtained. *See* 354 F.Supp. at 1023-1024.

[74]*Beer v. United States*, D. D.C., ___ F.Supp. ___, ___ (Civil Action No. 1495-73, Jan. 4, 1974) (slip op. at 9).



403 (1946). The Supreme Court again made clear this year that a court is presumed to be able to wield "the inherent powers of an equity court" in implementing a congressional policy with which it is entrusted. *Renegotiation Board v. Bannercraft Clothing Co.*, ___ U.S. ___, ___, 42 *U.S. L. Week* 4203, 4209 (February 19, 1974).

> * * * Unless a statute in so many words, or by a necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. "The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction." *Brown v. Swann*, 10 Pet. 497, 503. * * *

*Porter v. Warner Holding Co., supra*, 328 U.S. at 398.[75] We perceive no clear indication in the Voting Rights Act or its legislative history that Congress, when entrusting this court with responsibility under Section 5, meant to limit our power to enforce the section's direct command that voting practices and procedures not be changed without prior approval.[76] The *Beer I*

[75]*See also Mitchell v. Robert DeMario Jewelry, Inc.*, 361 U.S. 288, 290-291 (1960); *Scripps-Howard Radio, Inc. v. FCC*, 316 U.S. 4, 16-17 (1942). It is interesting to note that the declaratory judgment statute itself provides for equitable relief, at least when a declaratory judgment is granted.

> Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.

28 U.S.C. §2202 (1970).

[76]The fact that the Voting Rights Act does not explicitly empower this court to issue on the motion of private parties

court stressed that *Allen v. State Board of Elections, supra,* made clear that, while a local three-judge District Court can determine whether a given administrative change is covered by Section 5 and can enjoin its implementation prior to approval if it is covered, only a three-judge District Court in the District of Columbia can declare that a covered change does not have a discriminatory purpose or effect. But we do not think it evident that Section 5's limitation on the power of local three-judge District Courts by placing declaratory judgment authority exclusively in our hands limits our equitable jurisdiction by making this declaratory authority exclusive of all other power.[77]

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injunctions voiding past implementation of practices and procedures which have failed to obtain approval under §5 does not constitute such an indication. Congress did not explicitly authorize any court to enter such injunctions on the motion of private parties, yet the Supreme Court has at least made clear that local three-judge District Courts have authority to consider requests of private parties to invalidate illegal elections and order the conduct of new ones. *See Allen v. State Board of Elections, supra* note 3, 393 U.S. at 554-557.

[77]The "strong" reason which the *Allen* Court offered for its interpretation of §5's limitation on the power of local three-judge District Courts does not support a reciprocal limitation on the power of this court. The *Allen* Court noted that, whereas suits to require submission of an electoral change for approval will often be brought by aggrieved private citizens who might be greatly burdened by having to come to the District of Columbia to bring suit, the states who must bring declaratory judgment actions can afford the costs of litigating here. 393 U.S. at 559. If the private citizen has already intervened in a state-initiated declaratory judgment action before this court, it would be ridiculous for us to refuse to grant an injunction because it would have been less of a burden on him to have requested it in a local District Court.



Though we believe we do have jurisdiction to enforce the direct command of Section 5 by enjoining the annexation in order that councilmanic elections within Richmond's old boundaries can be immediately held, we nonetheless refrain from doing so. Our restraint derives from the same considerations which we suspect ultimately underlay the *Beer I* court's decision: hesitancy "to become involved in the intricacies of local political redistricting * * * or * * * to take over the traditional responsibility of a local court to resolve questions more conveniently litigable before its bench." *Beer I, supra,* ___ F.Supp. at ___ (slip opinion at 10).

We are particularly influenced by the Supreme Court's handling of the remedial issue in *Perkins v. Matthews, supra.* Though the *Perkins* Court held that Canton, Mississippi had violated Section 5 by allowing annexed citizens to vote in its 1969 elections without obtaining prior approval from this court or the Attorney General, the Court refused to set aside the 1969 elections and order immediate new elections within Canton's old boundaries. The Court instead remanded the case to the local three-judge District Court, emphasizing that since the local court was "more familiar with the nuances of the local situation than are we," "the question of the appropriate remedy is for that court to determine, in the first instance * * *."[78]

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[78]400 U.S. at 397. In both *Allen v. State Board of Elections, supra* note 3, and *Georgia v. United States, supra* note 3, states had also held elections under new practices and procedures with respect to voting without obtaining the requisite prior approval. The Supreme Court refrained from ordering immediate new elections under the old practices and procedures in each case. However, the Court's stated reason for refraining is in neither

*Perkins* involved review of a local District Court's failure to require Canton to submit its changed procedures for approval, and the Supreme Court suggested that the case for ordering new elections under old procedures would be stronger if, as in our case, approval was sought and not obtained.[79] However, we think the local District Court's familiarity "with the nuances of the local situation" is as relevant here as in *Perkins*; we are no more aware of these nuances in our case than was the Supreme Court in *Perkins*. The local District Court can better balance all relevant factors, including our refusal to grant Richmond a declaratory judgment, in deciding whether to order de-annexation.

As noted above, intervenor Holt has already filed in the District Court for the Eastern District of Virginia an action seeking a judgment that the annexation was without effect for lack of prior approval by the Attorney General or this court. Proceedings in that action have been stayed pending decision in this case. We perceive no reason why Holt cannot repair to the District Court in Virginia and obtain not only fair, but also more fully informed, consideration of his request for de-annexation.

It should be totally clear by this point, however, that our refusal to order de-annexation and immediate new elections does not mean that Richmond is free to hold

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case relevant here. In *Allen* the Court stressed that the "§5 coverage questions involve[d] complex issues of first impression." 393 U.S. at 572. And in *Georgia* the Court noted that the elections had been conducted under the disputed new procedures by reason of its own stay order. 411 U.S. at 541.

[79] 400 at U.S. 396-397.



more elections within its expanded boundaries. Because of our denial of the declaratory judgment it sought, Richmond continues to be restrained by Section 5 from holding elections in which individuals residing within the annexed area are permitted to participate.

The application for declaratory judgment is denied.

/s/J. Skelly Wright
J. SKELLY WRIGHT
UNITED STATES CIRCUIT JUDGE

/s/ [unsigned]
WILLIAM B. JONES
UNITED STATES DISTRICT JUDGE

/s/June L. Green
JUNE L. GREEN
UNITED STATES DISTRICT JUDGE

Washington, D.C.

JONES, District Judge: I concur in the result as well as in Parts I and II of Judge Wright's opinion. I dissent from Part III of that opinion which states that this Court has jurisdiction "to enforce the direct command of Section 5 by enjoining the annexation in order that councilmanic elections within Richmond's old boundaries can be immediately held * * *."

/s/ William B. Jones
William B. Jones
United States District Judge

## APPENDIX C

[Caption omitted in printing.]

FILED
Jan 21 1974
James F. Davey, Clerk

## FINDINGS OF FACTS AND CONCLUSIONS OF LAW

Jurisdiction

This matter was referred to United States Magistrate Lawrence S. Margolis appointed as Special Master by U.S. Court of Appeals Judge J. Skelly Wright, and U.S. District Court Judges William B. Jones and June L. Green under Rule 53(c) of the Federal Rules of Civil Procedure "for a hearing on the merits and to take testimony on the issue of whether the City of Richmond annexation plan as amended has the purpose or the effect of diluting the black vote in that City." Subsequent instructions from the three-judge Court expanded the issue to be heard to cover the entire scope of the annexation by the City of Richmond. Upon consideration of the record, the testimony and documentary evidence adduced at the hearing on October 15, 16 and 17, 1973, and after oral argument by counsel for the respective parties on December 19, 1973, the Special Master makes the following Findings of Fact and Conclusions of Law.

### FINDINGS OF FACTS

1. The *facts* as found by the U.S. District Court in *Holt v. City of Richmond.* 334 F.Supp. 228 (1971),



459 F.2d 1093 (1972), *cert. denied* 408 U.S. 931 (1972), are incorporated herein by reference. U.S. District Court Judge Robert R. Merhige, Jr., found that the City of Richmond annexation plan, i.e., the annexation of 23 square miles of Chesterfield County, had the purpose and the effect of diluting the black vote in that City. The record in that case has been stipulated to by the parties in this action.

### A. History of the Annexation

2. On January 2, 1962, the City of Richmond filed an Annexation Suit against the County of Chesterfield, Virginia, seeking the annexation of 51 square miles of Chesterfield County.

*Holt v. Richmond, supra.*

3. On May 15, 1969, a compromise boundary line, known as the Horner-Bagley Line was drawn, by which approximately 23 square miles of Chesterfield County would be annexed by the City of Richmond. (At that time, Phil J. Bagley was the Mayor of Richmond and Irvin G. Horner was the Chairman of the Chesterfield County Board of Supervisors.)

Testimony of Melvin W. Burnett, Record, p. 118 *Holt v. Richmond*

Testimony of Irvin G. Horner, Record, pp. 173, 174 *Holt v. Richmond*

Testimony of Phil J. Bagley, Jr. Record, pp. 413-420 *Holt v. Richmond*

4. The Horner-Bagley Line was agreed upon after extensive secret negotiations between representatives of

the City of Richmond and representatives of Chesterfield County. In all meetings, with regard to settlement, the City maintained a consistent position that required all negotiations to center upon the number of white people the City would receive by settlement. All economic, geographic, or other considerations such as utilities, schools, vacant land, and tax revenues were brushed aside. The final line was not actually drawn until the Mayor of the City, Phil J. Bagley, had assurances from the representatives of the County that at least 44,000 white people would be given up by the County.

Testimony of Melvin W. Burnett, Record, pp. 92-112, 120 *Holt v. Richmond*

Testimony of Irvin G. Horner, Record, pp. 145-179 *Holt v. Richmond*

5. At all times during the course of the negotiations with representatives of Chesterfield County, the Mayor was in constant contact with six Richmond City Councilmen endorsed by Richmond Forward, a white citizens organization. All council representatives of the black citizens were, however, systematically excluded from all meetings and conferences. The Council representatives of the black citizens knew nothing of the policy questions involving the annexation until after they became public knowledge.

Testimony of Henry L. Marsh, Record, pp. 64-71, 80-81 *Holt v. Richmond*

Testimony of Melvin W. Burnett, Record, p. 102 *Holt v. Richmond*

Testimony of Donald G. Pendleton, Record, pp. 215-216 *Holt v. Richmond*



Testimony of James G. Carpenter, Record, pp. 226-227 *Holt v. Richmond*

Testimony of Thomas J. Bliley, Record, pp. 350, 353-355 *Holt v. Richmond*

Testimony of Phil J. Bagley, Jr., Record, pp. 423-424, 431-432 *Holt v. Richmond*

Testimony of Alan F. Kiepper, Record, pp. 563, 567, 570-572, 611-614, 619-621 *Holt v. Richmond*

6. During the course of the annexation proceedings and thereafter, various City officials made statements on the annexation as follows:

(a) About 1966, at Farmville, Virginia, City Councilman James Wheat stated that the City of Richmond needed 44,000 leadership-type white affluent people.

Testimony of Irvin G. Horner, Record, p. 152 *Holt v. Richmond*

(b) Between July 16, 1968 and Septmeber 12, 1968, Alan F. Kiepper, Richmond City Manager, and Melvin W. Burnett, Executive Secretary of the Board of Supervisors of Chesterfield County, met to negotiate the pending annexation suit. At those meetings, the only consideration stated by Mr. Kiepper was the number of white people and black people in the area to be annexed.

Testimony of Melvin W. Burnett, Record, pp. 97-111 *Holt v. Richmond*

(c) At a meeting in Williamsburg, Virginia, about March of 1969, City Attorney Conrad B. Mattox, Mayor Crowe, and Phil J. Bagley indicated to Irvin G. Horner, Chairman of the Board of Supervisors of Chesterfield County, that the City must annex a part of Chesterfield

County or the City of Richmond would be taken over by the black population.

Testimony of Irvin G. Horner, Record, pp. 162-165 *Holt v. Richmond*

(d) At a meeting of the Aldhiser Commission (created by the State Legislature to study the City's expansion) in July, 1968, Ed Willey and others representing the City of Richmond, said to Donald G. Pendleton, member of the House of Delegates, that the City was concerned about the results of the 1970 City of Richmond Council races going all black.

Testimony of Donald G. Pendleton, Record, pp. 212-213 *Holt v. Richmond*

(e) In the fall of 1968, at a meeting with Leland Bassett at Charlottesville, Virginia, Mayor Bagley stated that "As long as I am the Mayor of the City of Richmond the niggers won't take over this town."

Testimony of Leland Bassett, Record, pp. 165-168 *Holt v. Richmond*

(f) In February 1970, at the Willow Oaks Country Club, Henry Valentine of Richmond Forward, stated that the purpose of the annexation was to keep the City from going all black. City Councilman Nathan Forb was concerned about Richmond becoming another Washington, D.C.

Testimony of George W. Jones, Record, pp. 253-255 *Holt v. Richmond*

Testimony of Roger C. Griffin, Record, pp. 270-274 *Holt v. Richmond*

Testimony of Ronald P. Livingston, Record, pp. 294-298 *Holt v. Richmond*



(g) On September 12, 1971, at a meeting of the Virginia Municipal League, Mayor Bagley stated to James G. Carpenter that niggers are not qualified to run the city.

Testimony of James G. Carpenter, Record, p. 230 *Holt v. Richmond*

7. The area of Chesterfield County annexed to the City of Richmond contained 51% of the value of the tax assessable property in the original area sought to be annexed, 59% of the school-age children, 60% of the total population, and 46% of the total land area.

Plaintiff's Exhibit No. 15, *Holt v. Richmond* Record
Defendant's Exhibit no. 12

8. Annexations in Virginia become effective at midnight on December 31 of the year in which the annexations would go into effect.

Virginia Code §15.1-1041(d).

9. Mayor Bagley and Councilman Davenport made acceptance of the Horner-Bagley Line conditioned on the fact that the annexation would go into effect January 1, 1970, and the people in the annexed area would be eligible to vote in the City Council elections of 1970. On July 12, 1969, the Circuit Court of Chesterfield County, Virginia, entered a final order of annexation awarding the City of Richmond approximately 23 square miles of Chesterfield County. The annexation became effective on January 1, 1970.

Testimony of Irvin G. Horner, Record, pp. 177-178 *Holt v. Richmond*

**Basic Demography**

10. The population of the City of Richmond, Virginia, as of 1970, *not* including the portion of Chesterfield County which was annexed on January 1, 1970, was 202,359 of which 104,207 (52%) were black and 98,152 (48%) were white.

*Holt v. Richmond*, 334 F.Supp. 240

11. The population of the annexed area of Chesterfield County as of 1970 was 47,262 of which 1,557 were black and 45,705 were white. After annexation, the population of the City of Richmond was approximately 58% white and 42% black.

*Holt v. Richmond*, 334 F.Supp. 240

12. The evidence that there is significant and widespread voting by blacks for black candidates and voting by whites for white candidates in the City of Richmond is uncontroverted.

Defendant's Exhibits No. 3-10

**History of the Voting Rights Action**

13. On January 28, 1971, the annexation and the concomitant changes in election practice and procedure were submitted to the Attorney General of the United States for his review pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973.

Plaintiff's Request for Admission of Fact No. 7 and Parties' Response Thereto.

14. On May 7, 1971, the Attorney General interposed an objection to the voting change which resulted from



the annexation. On September 30, 1971, the Attorney General refused to withdraw the objection.

Plaintiff's Request for Admission of Facts No. 8 and No. 9 and the Parties' Responses Thereto.

15. On August 25, 1972, the instant action was filed by the City of Richmond as a result of the Attorney General's objection. Subsequently, Curtis Holt, Sr., and the Crusade for Voters of Richmond were permitted to intervene by the three-judge court.

**Preparation of Ward Plans**

16. During 1971, the City of Richmond prepared several possible ward plans for dividing the City into Council election districts.

Plaintiff's Exhibits No. 12 and No. 13; Transcript, pp. 213, 295-297

17. Ward plans were presented and discussions were held from time to time between counsel for the City and the U.S. Department of Justice during the pendency of the instant case. The resulting final revised plan "D" was approved by the United States. On May 1, 1973, the Richmond City Council formally adopted the newly prepared ward plan dated April 25, 1973.

Plaintiff's Exhibits No. 15 and No. 17; Transcript, pp. 58-60, 114, 300-301

18. Dallas H. Oslin, Senior Planner for the City, assumed the task of drawing the plans.

Transcript, pp. 90-93

19. The plans the Dallas H. Oslin prepared were non-racially drawn. He used the guidelines or criteria of equal components (equality of population in each of nine wards), compactness of each ward, contiguity, likeness of area and responsibility, following geographical and physical boundaries, and maintaining the integrity of districts and communities of interest within each ward as much as possible.

Transcript, pp. 215-216, 225, 273, 275

20. While Oslin knew generally the black and white neighborhoods in the City, he did not draw his plans with racial divisions in mind. There is no evidence that in drawing, analyzing, or adopting any ward plans, the City made any attempt to minimize the dilution of the black vote which had been caused by the annexation. Olson did not use the census information on race until after the plans were initially drawn.

Transcript, pp. 215-216, 306-308

21. Two other City witnesses, Mayor Thomas Bliley and A. Howe Todd, generally agreed that the factors noted by Oslin were the proper ones to be used.

Testimony of Thomas Bliley, Transcript, pp. 63-64

Testimony of A. Howe Todd, Transcript, pp. 344-345, 424-425

22. The City of Richmond did not prove that its interest in avoiding wards which straddle the James River is sufficient to justify a dilution of the black vote.



**De-annexation**

23. Chesterfield County is financially able to re-annex the 23 square miles in dispute:

(a) Chesterfield County has 18 million dollars in the bank.

(b) The County has 10 to 12 million dollars due from the Water Control Board.

(c) The County has 4 to 5 million dollars in a water fund.

(d) The County has 1 million dollars in uncommitted revenue sharing.

(e) The County has 12.7 million dollars of authorized school bond issue.

(f) All Chesterfield County capital outlays with the exception of schools and utilities are paid from current revenue.

Testimony of Melvin W. Burnett, Transcript, pp. 688-689

24. Chesterfield County is administratively capable of resuming all services to the annexed area:

(a) The County School system is innovative and capable of reabsorbing the children.

(b) The County could utilize the recently constructed city fire facilities, and has just recently expanded its own fire department.

(c) The County could carry hose converters on its trucks temporarily so as to adapt to City-built fire-fighting implements.

(d) The County Police Department has a sufficient waiting list and sufficient available overtime.

(e) Trash and garbage collection would be handled by the same private contractor.

(f) The water supply of the County is superior to that of the City, and the County could use almost every water line installed by the City.

(g) The County could utilize the City-installed sewer lines.

(h) All City records with regard to utilities, assessments, taxes, etc., are computerized and can be easily obtained from the City computer for use in the County computer.

Testimony of Melvin W. Burnett, Transcript, pp. 682-687

25. Chesterfield County is willing to reassume governmental control over the annexed area and could do so in 30 days after an order of de-annexation.

Testimony of Melvin W. Burnett, Transcript, pp. 683, 684, 697

26. The City of Richmond will not suffer any substantial economic deprivation if de-annexation is ordered:

(a) The City has spent only 7 million dollars in the annexed area to date, with 21.3 million dollars which must be spent within the next 2-½ years.

(b) The City suffers an annual net financial loss of between 8.5 million and 17 million dollars from the annexed area.

(c) Of the vacant land received, only 6-¼% of it is capable of development.

(d) The return of the annexed area would thus save the City at least 8.5 million dollars of operating loss per year, and 21.3 million dollars of required capital outlay. The City would also realize bond assumptions and cash reimbursements in excess of 7 million dollars.



Testimony of Melvin W. Burnett, Transcript, pp. 692-695

## CONCLUSIONS OF LAW

1. This Court has jurisdiction over this action pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.

2. Plaintiff is a political subdivision of the Commonwealth of Virginia with respect to which the provisions of said section are in effect. 30 F.R. 9897, August 7, 1965.

3. Changing boundary lines by an annexation which enlarges the City's number of eligible voters constitutes a change of a "standard, practice, or procedure with respect to voting" as contemplated under 42 U.S.C. 1973c. The annexation of land from Chesterfield County on January 1, 1970 and the changes resulting therefrom are within the scope of Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. *Perkins v. Matthews*, 400 U.S. 379 (1971); *City of Petersburg, Virginia v. United States*, 354 F. Supp. 1021, (D.C. D.C. 1972), *aff'd* 410 U.S. 962 (1973).

4. In seeking to meet the requirements of Section 5 for enforcement of voting changes brought about by the annexation, the City of Richmond carries the burden of proving that the changes in election procedures (1) Do *not* have the *purpose* of denying or abridging the right to vote on account of race or color and that they (2) Do *not* have the *effect* of denying or abridging the right to vote on account of race or color, 42 U.S.C. 1973c. In *Holt v. Richmond*, the burden of proof was

placed upon the plaintiff Holt to show that there were violations of the Fifteenth Amendment by the defendant City of Richmond. For these reasons, the doctrines of *res judicata* and collateral estoppel urged by plaintiff to bar consideration by this Court of the purpose of the annexation do not apply in this case. Also in *Holt v. Richmond* 459 F.2d 1073, 1100 (1972), the Fourth Circuit Court of Appeals noted that its holding indicating no violation of any Fifteenth Amendment right by the annexation "reflects no opinion as to the appropriateness or inappropriateness of the Attorney General's objection [in a Voting Rights Act case]."

5. Although an annexation may be benignly conceived, racial intent may later permeate the annexation plan so as to obviate the initial benign purpose.

6. It is necessary to look at the purpose of the annexation at the time of implementation as well as at the time of its conception to determine whether there has been compliance with the Voting Rights Act.

7. The City of Richmond has not met its burden of proving that the annexation of January 1, 1970, even as modified by the nine ward City Council plan. did not have the purpose of diluting the right to vote of the black citizens of Richmond, particularly in the light of the finding of racial purpose by U.S. District Court Judge Robert R. Merhige, Jr., in *Holt v. City of Richmond,* 334 F. Supp. 228, 236, and the Record in this case.

8. The acceptance of a ward plan in *City of Petersburg v. United States, supra,* is not controlling in this case, since that decision was based on the finding that the



annexation was *not* for the purpose of denying blacks the right to vote on account of race or color.

9. Ward plans, no matter how equitably drawn, cannot serve to cure an impermissible racial purpose.

10. The "effect" of the annexation clearly was to dilute the black vote in the City of Richmond; this has been essentially conceded by all the parties.

11. Furthermore, in view of the finding that de-annexation will not prove unduly burdensome or costly, de-annexation is the only method by which the instant impermissible racial purpose may be cured. Dissenting opinion of Circuit Judge Butzner in *Holt v. Richmond,* 459 F. 2d 1093, 1100.

12. This Court finds that the issue of racial purpose in the annexation is dispositive of this case. However, even if the City of Richmond had been able to prove the absence of an impermissible racial purpose, the City still carries the burden of proof that the annexation, as amended by the nine ward plan, does not have the effect of denying or diluting the right to vote on account of race. 42 U.S.C. 1973c; *City of Petersburg v. United States, supra.*

13. To be acceptable, any plan for dividing the City of Richmond into Council wards must eliminate the racially dilutive effect of the annexation to the greatest extent reasonably possible. *City of Petersburg v. United States, supra.*

14. The City of Richmond has presented little evidence that its nine ward plan seeks to eliminate the dilutive effect of the annexation to the greatest extent reasonably possible. Plaintiff's case has been limited primarily to proof purporting to show that it was valid or reasonable to draw a plan using a criterion referred

to as "community of interest," and maintaining the James River as an inviolate ward boundry. Whatever the legitimacy of such criteria in a traditional Fifteenth Amendment case, the situation is different in a case brought under the Voting Rights Act, where the burden of proving non-discrimination is a heavy burden upon the plaintiff. *City of Petersburg v. United States, supra.*

15. Thus the nine ward plan of the City of Richmond is rejected by this Court since the City has not shown that elimination of the dilutive effect of the black vote by the nine ward plan was properly considered by the City officials.

16. The Crusade for Voters of Richmond has not introduced sufficient evidence to show that its ward plans eliminated the dilutive effect of the annexation to the maximum extent reasonably possible. Thus, this Court is unable to accept any of the Crusade Plans as being permissible under the Voting Rights Act.

17. The recommendation of the United States with regard to acceptance to the City's nine ward plan and the City's claim of economic need are only factors to be balanced against the dilutive effect of the black vote by the annexation plan, as amended. *City of Petersburg v. United States, supra.* In fact, the City has failed to establish any counterbalancing economic or administrative benefits of the annexation on the Record in this case.

18. Consequently, as the requirements of the Voting Rights Act are most clear and compelling and have not been met by the plaintiff City of Richmond, this Court rejects its annexation plan, as amended.

19. Furthermore, the annexation plans of the Crusade for Voters of Richmond are similarly rejected.



20. De-annexation of the land acquired by the City of Richmond from Chesterfield County is mandated.[1]

/s/ LAWRENCE S. MARGOLIS
United States Magistrate
for the District of Columbia

Dated this 18th day of January, 1974.

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[1] During the course of its case, the plaintiff sought to introduce the deposition of Dr. William S. Thornton, a witness listed by the Crusade for Voters of Richmond, and later withdrawn. The various pretrial orders of the Court restricted the parties to those witnesses previously listed. Dr. Thornton was not listed as a witness by the plaintiff. Therefore, the deposition is inadmissible. Even if it were admissible, it would not alter the findings in this case.

## APPENDIX D

**Title 42, United States Code:**

**§1973c. Alteration of voting qualifications and procedures; action by state or political subdivision for declaratory judgment of no denial or abridgement of voting rights; three-judge district court; appeal to Supreme Court**

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1968, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such



qualification, prerequisite, standard, practice, or procedure: *Provided*, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, except that neither the Attorney General's failure to object nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite, standard, practice, or procedure. Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

Pub.L. 89-110, Title I, §5, Aug. 6, 1965, 79 Stat. 439; Pub.L. 91-285, §5, June 22, 1970, 84 Stat. 315.

## APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Filed July 15, 1974

Civil Action No. 1718-72

CITY OF RICHMOND, VIRGINIA,

Plaintiff

v.

UNITED STATES OF AMERICA
and RICHARD KLEINDIENST,

Defendants

CURTIS HOLT, SR. *et al.* and
CRUSADE FOR VOTERS OF
RICHMOND *et al.*,

Defendant Intervenors

### NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that the City of Richmond, Virginia, the plaintiff above-named, hereby appeals to the Supreme Court of the United States from the final order denying plaintiff's application for a declaratory



judgement entered in this action on June 6, 1974.

This appeal is taken pursuant to 42 U.S.C. §1973c.

/s/Charles S. Rhyne

Charles S. Rhyne, Esq.
Rhyne & Rhyne
400 Hill Building
839 17th Street, N.W.
Washington, D.C. 20006

*Counsel for Plaintiff*

Supreme Court, U. S.
FILED
JAN 30 1975
MICHAEL RODAK, JR., CLERK

**APPENDIX**
**Volume I – Pages 1-260**

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

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**No. 74-201**

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CITY OF RICHMOND, VIRGINIA,

*Appellant,*

v.

UNITED STATES OF AMERICA and
WILLIAM B. SAXBE, ATTORNEY GENERAL, and
CURTIS HOLT, SR. *et al.* and
CRUSADE FOR VOTERS OF RICHMOND, *et al.*,

*Appellees.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT FILED AUGUST 29, 1974

JURISDICTION NOTED DECEMBER 16, 1974

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### CIVIL DOCKET
### United States District Court for the District of Columbia

**1972**

Aug. 25, Complaint, appearance; Ex. A thru E; Request for Third-Judge Court, filed.

Aug. 25, Summons, Copies (2) and Copies (2) of Complaint issued D.A. & Atty. Gen. Ser. 8/28/72.

Sep. 11, Motion of Curtis Holt, Sr. for himself and on behalf of all other similarly situated for leave to intervene as a defts. exhibit memorandum c/m 9/8 M.C. Appearance of W.H.C. Venable, (422 East Main St., Richmond, Va. 23219. $5.00 deposit by Venable).

Sep. 14, Order extending time for plaintiff and defendants to reply to petition for leave to intervene to September 25, 1972. (N) Richey J.

Sep. 14, Motion of plaintiff to extend time to reply to petition for leave to intervene; P & A; c/m 9-14.

Sep. 14, Application of plaintiff for Three Judge Court; c/m 9-14.

Sep. 25, Response of the United States to motion to intervene; c/m 9-25-72.

Sep. 25, Memorandum of plaintiff in opposition to petition of Curtis Holt for leave to intervene; table of cases and authorities; P & A; c/m 9-25.

Sep. 25, Request by plaintiff for oral hearing on motion for leave to intervene.

Oct. 3, Application for Three Judge Court granted. (N) (Signed 10-2-72) Green.

Oct. 6, Designation of the Honorable J. Skelly Wright, U.S.C.A. and the Honorable William B. Jones, U.S.D.C.

to serve with the Honorable June L. Green as members of a three-judge panel to hear and determine this case. (N) Bazelon, C.J.

Oct. 6, Motion of Curtis Holt, Sr. to amend petition to intervene; exhibit; c/m 9-8-72 M.C.

Oct. 6, Motion of Curtis Holt, Sr. to proceed in Forma Pauperis; affidavit c/m 9-18-72 M.C.

Oct. 6, Reply of pltf Curtis Holt, Sr. to pltfs memorandum in opposition to petition to intervene; c/m 9-28-72.

Oct. 10, Memorandum of plaintiff in opposition to amended petition of Curtis Holt, Sr. for leave to intervene; table of contents; table of cases and authorities; c/m 10-10.

Oct. 17, Letter dated 9-28-72 entering the appearance of Josph D. Tydings and Michael E. Kris at 1120 Conn. Ave., N.W. as counsel for petitioner-intervenors.

Oct. 18, Petition of Crusade for Voters of Richmond, Virginia, Dr. William S. Thornton Dr. M. Philmore Howlette, for leave to intervene as defts. P&A; Attachment Exhibits (2); c/m 10-18-72; M.C.

Oct. 18, Deposit $5.00 by Derfner.

Oct. 18, Appearance of Armand Derfner, counsel for above interveners.

Oct. 18, Order granting the petition of Curtis Holt, Sr. Leave to intervene as deft. and permitting him to file in Forma Pauperis. (N) Wright, J. Jones, J. Green.

Oct. 27, Answer of defendants to complaint; exhibit A; c/m 10-27. Appearance of Robert R. Rush, Gerald W. Jones, Department of Justice.

Oct. 27, Calendared (CD/N).

Oct. 27, Motion of defendants to dismiss; P & A; c/m 10-27. M.C.



Oct. 27, Response of defendant USA to motion to intervene; c/m 10-27.

Nov. 8, Order granting petition of the Crusade Voters of Richmond, et al, to intervene. (N) (Signed 11-6-72) Wright, Jones & Green, J.

Nov. 9, Opposition of plaintiff to motion to dismiss; c/m 11-9.

Nov. 9, Motion of plaintiff for leave to file amendment to complaint; exhibit A; P & A; c/m 11-9. M.C.

Nov. 15, Withdrawal of Crusade Intervenors' motion to dismiss, as per counsel; c/m 11-14.

Nov. 16, Response of defendants to plaintiffs motion to amend complaint; c/m 11-16.

Nov. 17, Order denying defendants motion to dismiss; granting plaintiffs motion to amend the complaint. (N) Green, J.

Nov. 30, Appearance of James P. Parker as counsel for intervenors.

Dec. 4, Amended complaint; c/m 11-9.

Dec. 4, Answer of defendants to plaintiffs amended complaint; c/m 12-4.

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Jan. 26, Answer of deft. Intervenors Crusade For Voters, et al. to pltfs. first amendment to complaint. c/m 1/23/73.

Feb. 9, Stipulation for extension of time for pltf. to respond to defts. intervenor's interrogatories to and including 3/29/73. (fiat) (N) Green, J.

Feb. 12, Request of pltf. for admissions of facts; appendix A & B. c/m 2/9.

Mar. 5, Second set of interrogatories of Intervenors to pltff. c/m 3/2.

Mar. 8, Calendar Call. (Rep: E.O. Wells) Green, J.

Mar. 9, Order directing that all discovery be completed by 4/6/73 and setting forth further instructions to all parties. (N) Green, J.

Mar. 9, Motion for leave to dispense with printing of juridictional statement attachments filed. Green, J.

Mar. 12, Answer of deft. Intervenor, Crusade for Voters to pltf's request for admission of facts. c/m 3/9.

Mar. 12, Notice of deft. Intervenor to take deposition of William Leightinger Dallas Oslin. c/m 3/8.

Mar. 12, Answer of intervenor, Curtis Holt to pltfs request for admission of facts. c/m 3/9.

March 14, Answer of defts. 1 and 2 to pltf's request for admission of facts. c/m 3/14.

Mar. 16, Transcript of proceedings – 3-8-73. (Rep: Elaine Wells) (Court's Copy).

Mar. 19, Interrogatories of intervenors Curtis Holt, Sr., et al to pltfs. c/m 3/19.

Mar. 29, Answers and responses of pltf to deft-Intervenors' interrogatories. c/m 3/23.

Mar. 30, Notice of deft Intervenors Curtis Holt, et al to take depositions of William Leightinger, George Talcott, Conard Mattox, Henry Valentine, Thomas Bliley, Leonard L. Wharton, Robert T. Fary and A. Howard Todd. c/m 3/28/73.

Apr. 6, Answer of pltf and responses to deft Intervenor Crusade for Voters interrogatories. c/m 4/5/73.

Apr. 6, Answer of pltf and responses to interrogatories of deft intervenor Curtis Holt, Sr. c/m 4/5/73.

Apr. 6, Motion of Donald O. Sutton, for leave to intervene as a pltf. exhibits K-1; K-2; K-3; K-4; K-5; K-6; K-7. M.C. Appearance of Donald O. Sutton, 2316 Royall Ave., Richmond, Va. 23224 in proper person: Deposit $5.00 by Sutton.

Apr. 13, Certificate of service of mailing copy of motion to intervene by Donald O. Sutton on 4-10-73 to all parties of record; exhibit K-8 attached.



*Apr. 20, Response of U.S.A. to motion to intervene by Donald O. Sutton; c/m 4/20/73.

*Apr. 19, Order denying petition of Donald O. Sutton for leave to intervene as a party pltf. (N) Green, J.

Apr. 23, Deposition of William J. Leidinger for the deft. Intervenors, Crusade For Voters of Richmond, et al. Published and filed.

Apr. 23, Depostion of Dallas H. Oslin for the deft. Intervenors, Crusade For Voters of Richmond, et al. Published and filed.

Apr. 24, Opposition of pltf to motion to intervene by Donald O. Sutton; P & A. c/m 4/24/73.

Apr. 25, Stipulation, filed. (N) Wright, J., Jones, J., Green, J.

Apr. 26, Response of Curtis Holt, Sr., et al to motion to intervene of Donald O. Sutton; c/m 4/24/73.

Apr. 26, Stipulation, filed.

Apr. 26, Order amending Court's Order of March 9, 1973 extending the May 1, 1973, deadline to June 15, 1973. (N) (signed 4/25/73) Green, J.

Apr. 27, Motion of deft. intervenors to compel answers to interrogatories; memorandum; c/m 4/25/73 M.C.

May 2, Opposition of pltf to motion to compel answers to interrogatories; P & A; c/m 5/2/73.

May 7, Order directing pltf. within 15 days from entry of this Order make full and complete answers to deft-intervenor's interrogatories. Green, J.

May 15, Proposed findings of fact and conclusions of law by defts. Holt et al, 5-15.

May 15, Proposed findings of fact and conclusions of law by pltf. c/m 5-15.

May 15, Motion of pltf. to consider consent judgment; exhibit A; P & A; attachment c/m 5-8.

May 16, Proposed findings of fact and conclusions of law by defts; exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; c/m 5/15/73.

May 17, Depositions of William J. Leidinger, Leonard Lee Wharton, Robert T. Fary, Conrad B. Mattox, Jr. and George Talcott published and filed.

May 17, Depositions of Henry Lee Valentine II, Mayor Thomas J. Bliley, Jr. and A. Howe Todd published and filed.

May 18, Supplemental memorandum of P & A; by pltf. exhibits A, B, C and D. c/m 5/18/73.

May 22, Copies of pages of transcript referred to in defts proposed findings of fact and conclusions of law.

May 24, Answer of pltf and responses to interrogatories of Intervenor Curtis Holt., Sr. attachment; c/m 5/22/73.

May 30, Objections of deft. intervenors to consideration of entry to consent judgment proposed by pltf. c/m 5-30-73.

Jun. 4, Motion of intervenor Holt for sanctions for failure to respond to order for discovery. c/m 5-31-73; M.C.

Jun. 4, Further answer of pltf. and response to interrogatory 13; attachment; c/m 6-1-73.

Jun. 6, Motion of James W. Benton, Jr. for withdrawal of appearance. c/m 6-5-73 M.C.

Jun. 7, Reply of pltf. to intervenor's objection to consideration of consent judgment; and motion of pltf. for relief under Rule 54 F.R.C. v P. Affidavit of Conrad B. Mattox; Statement; c/m 6-7-73. M.C.

Jun. 11, Further answer of pltf. and response to interrogatory 13 of Intervenor Holt; attachment; c/m 6-8-73.

**June 12,

June 15, Answer of deft #3 to interrogatory; c/m 6/14/73. Error



June 15, Memorandum of law by pltf.; c/m 6/15/73.

June 15, List of witnesses by pltf.; c/m 6/15/73.

June 15, Memorandum of law by intervenors Curtis Holt. et al; exhibit; c/m 6/15/73.

June 15, List of witnesses by intervenors Holt; c/m 6/15/73 and exhibit C.

June 18, Pretrial brief by deft; c/m 6/15/73.

**June 12, Order directing the parties on or before July 2, 1973 to file legal memoranda addressing certain questions. (N) Green, J.

July 2, MOTION of Intervenor Crusade for Voters of Richmond for dismissal; Pretrial memorandum; Ex. A,B,C,D; c/m 7-2-73.

July 2, LEGAL memorandum of pltf; c/m 7-2-73.

July 2, MEMORANDUM of law by defts.; c/m 7-2-73.

July 5, MOTION of deft. intervenors Curtis Holt for summary judgment; c/m 7/2/73.

July 5, MOTION of deft. intervenors Curtis Holt for dismissal and relief; c/m 7/2/73.

July 5, SUPPLEMENTAL memorandum of newly discovered evidence in support of objections to consideration of consent judgment; affidavits (2) c/m 7/2/73.

July 5, LEGAL memorandum in response to order of 6/11/73; c/m 7/2/73.

July 10, LETTER dated 7/3/73 to Judges Wright, Green and Jones from Mr. Venable; attachments (2).

July 12, OBJECTIONS by pltff. to motions of intervenors to dismiss and for summary judgment and renewal of pltffs. motions to amend complaint and for summary judgment.

July 19, SUBMISSION of Ward Plans by defts – intervenor Crusade for voters of Richmond; maps n, o and p; c/m 6/19/73.

July 20, STATEMENT by deft. in opposition to intervenors motions to dismiss and summary judgment; c/m 7/20/73.

July 24, CERTIFIED copy order USDC for Eastern District of Virginia, Richmond division, transferring the complete record to this court. Received 5 boxes and 1 roll of maps and charts. See memo attached.

July 24, TRANSCRIPT of proceedings 7/23/73 Elaine Wells Rep. Court's copy.

July 24, ORDER denying pltfs. motion for summary judgment; denying the oral motion of a November 1973 election of the city council; denying deft-intervenor Holt's motions to dismiss or for summary judgment and for sanctions; granting James Benton's motion to withdraw. (N) (signed 7-23-73) Green, J.

Aug. 7, OBJECTIONS of deft. intervenors, Holt, et al to order of 7-23-73; c/m 8-3-73.

Aug. 14, ORDER overruling objections of deft-intervenors, Curtis Holt, Sr., et al to the referral of this case to a master. (N) Wright, J. (USCA) Jones, J.

Sept. 11, OBJECTION of deft. Intervenor, Curtis Holt, Sr., et al to additional witnesses and exhibits being introduced or considered beyond the provisions of the former Orders of the Court; P&A. c/m 9-6.

Sept. 17, MEMORANDUM of Intervenors, Holt briefly outlining position regarding scope of issue before Magistrate and Law controlling resolution of that issue. c/m 9-13.

Sept. 17, ORDER overruling deft. intervenor Curtis Holt, Sr., et al's objections to additional witnesses and evidence being introduced. (N) Magistrate Margolis.



Sept. 18, MOTION of deft-Intervenors, Curtis Holt, Sr., et al to postpone the Master's hearing set for 9-24-73, to allow discovery and to clarify its order dated 7-23-73. affidavit. c/m 9-17.

Oct. 1, NOTICES (3) to take depositions of witnesses by intervenor deft. Curtis Holt; c/m 9-27-73.

Oct. 10, DEPOSITIONS of Mayor Thomas J. Bliley, Jr. and Dr. William S. Thornton published and filed.

Oct. 10, DEPOSITION of A. Howe Todd published and filed.

Oct. 15, TRIAL begun Oct. 15, 1973 at 10:05 a.m. and respited until 9:00 a.m. 10-16-73. (Reps: J. Lazurus, L. Lacy) Margolis, Mag.

Oct. 16, TRIAL begun 9:30 a.m. 10-16-73 and respited until 10-17-73 at 9:30 a.m. (Rep: B. Trivisani) Margolis, Mag.

Oct. 17, TRIAL begun at 9:30 a.m. and concluded 10-17-73. Taken under advisement. (Rep: R. Reilly) Margolis, Mag.

Nov. 7, TRANSCRIPT of proceedings, October 15, 1973; pp 1 thru 257; (Rep: Elizabeth Lacy) Court's Copy.

Nov. 7, TRANSCRIPT of proceedings, October 16, 1973; 260 thru 380; (Rep: Brenda Trivisani) Court's Copy.

Nov. 7, TRANSCRIPT of proceedings, Afternoon session, October 16, 1973: pp 381-568; (Rep: Brenda Trivisani) Court's Copy.

Nov. 7, TRANSCRIPT of proceedings, October 17, 1973; pp 570 thru 737. (Rep: Robert A. Reilly) Court's Copy.

Dec. 11, TRANSCRIPT of Proceedings of Sept. 26, 1973, pages 1-45. Rep: J&K Reporting Service; Court's copy.

Dec. 17, OPPOSITION of Curtis Holts, Sr. to consideration of deposition of William S. Thornton; c/m–

Dec. 19, ORAL arguments began at 2:10 p.m. 12-19-73; arguments concluded and taken under advisement. (Rep: J. Lazarus) Margolis, Mag.

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Jan 17, TRANSCRIPT OF PROCEEDINGS of Dec. 19, 1973, pages 1-53. (Rep: J. Lazarus) Court copy.

Jan. 21, FINDINGS of facts and conclusions of law. Margolis, Mag.

Jan 31, MOTION by defts. for modification of Master's Report; objections; c/m 1-31-74.

Jan. 31, MOTION by pltf. City of Richmond, to reject the Findings of Fact and Conclusions of Law; P&A's.

Jan. 31, OBJECTIONS by pltf. City of Richmond to the Findings of Fact and Conclusions of Law of the Master; c/m 1-31-74.

Jan. 31, MOTION to extend time for serving objections to the Report of the Special Master; c/s 1-30-74.

Jan. 31, ORDER granting deft.-intervenor, Crusade Voters of Richmond, until 2-4-74 to file objections to the Report of the Special Master. (N) Green, J.

Feb. 4, OBJECTIONS by deft.-intervenors, Crusade for Voters, et al, to Report of the Special Master; c/m 2-4-74.

Feb. 6, MOTION by deft.-intervenors, Crusade for Voters of Richmond, for modification of Master's Report; and for immediate payment of costs of hearing before special master; c/m 2-5-74.

Feb. 8, ORDER extending time for pltff to file a response to the Master's Report until 2-13-74. (N) Green, J.



Feb. 11, OPPOSITION of pltff to intervenor Crusade's motion for immediate payment of costs; c/m 2-11-74.

Feb. 13, MOTION by deft.-intervenors to adopt and approve the Report of the Special Master and to deny various objections and related motions to vacate or reject; c/m 2-12-74.

Feb. 13, REPLY to objections filed to Master's findings and conclusions; c/m 2-12.

Feb. 15, OPPOSITION by pltf. to motion of intervenor Holt to strike; c/m 2-15-74.

Feb. 25, PAGES 1 through 4 of deft.-intervenor's reply to objections filed to Master's findings and conclusions substituted, approved. (FIAT) Green, J.

Mar. 20, HEARING begun and concluded and taken under advisement. (Rep: E. Wells) Wright, J., USCA, Jones, J., USDC, Green, J., USDC.

Mar. 20, COPY of optinion filed 3-15-74. (Beers vs. U.S.A. C.A. 1495-73)

Apr. 9, TRANSCRIPT OF PROCEEDINGS of March 20, 1974, pages 1-55. (Rep: E. Wells); Court copy.

May 14, CERTIFIED copy of abstract of votes in the City of Petersburg, Va. Copies mailed to Judge Skelly Wright, Judge June Green, and Judge William B. Jones.

May 29, APPLICATION by pltfs for declaratory judgment is denied. Wright, J., Jones, J., Green, J.

June 6, JUDGMENT denying pltfs. application for a declaratory judgment. (N) Wright, J. USCA, Jones, J. USDC, Green, J. USDC.

Jun. 19, MOTION by pltf. to rescind and vacate and stay entry of final order; P&A's; exhibit A; c/m 6-19-74.

July 2, MOTION by deft. intervenor Curtis Holt, Sr., et al, for attorney's fee memorandum; c/m 7-2-74; attachment.

July 2, RESPONSE and motion by deft.-intervenors, to pltfs. motion to rescind vacate and stay final Order of June 6, 1974; memorandum of law; c/m 7-2-74.

Jul. 2, ORDER denying pltfs. motion to rescind, vacate and stay entry of final order. (N) Green, J.

Jul. 5, SUPPORTIVE vouchers and itemized time logs by deft.

Jul. 5, OPPOSITION by deft.-intervenors to pltfs. motion to rescind and vacate order; c/m 7-3-74.

Jul. 15, MEMORANDUM by pltf. in opposition to deft.-intervenor Curtis Holt, Sr.'s motion for attorney's fees; attachments (5); exhibit A,B-1, B-2; attachments (4); c/m 7-15-74.

Jul. 15, NOTICE of appeal by pltf. to the Supreme Court of the United States from Judgment of June 6, 1974; c/m 7-15-74. Deposit $5.00 by Charles S. Rhyne and credited to United States.

Jul. 22, NOTICE by pltf. to take deposition of Curtis Holt, Sr.; c/m 7-19-74.

Jul. 22, REQUEST by pltf. to produce; c/m 7-19-74.

Jul. 22, NOTICE by pltf. to take deposition of W.H.C. Venable; exhibit A; c/m 7-19.

Jul. 22, NOTICE by pltf. to take deposition of John M. McCarthy; exhihit A; c/m 7-19-74.

Jul. 22, NOTICE by pltf. to take deposition of Thomas F. Coates, III; exhibit A; c/m 7-19-74.

Jul. 22, NOTICE by pltf. to take deposition of J. Hatcher Johnson; exhibit A; c/m 7-19-74.

Jul. 22, NOTICE by pltf. to take deposition of E. G. Allen, Jr.; exhibit A; c/m 7-19-74.

Jul. 29, RESPONSE by defts. to memorandum in opposition to deft.-intervenors motion for attorneys' fees; c/m 7-25-74.



Aug. 1, AMENDED certificate of service by pltf. filed on July 15, 1974.

Aug. 1, MOTION by pltf. to quash; brief; c/m 8-1-74.

Oct. 2, MOTION by deft.-intervenors, Crusade for Voters of Richmond, et al for attorney's fees; memorandum; Appendix A; c/m 10-1-74.

Oct. 11, MOTION by pltf. for extension of time to file a response to intervenor, Crusade for Voter's motion for fees; c/m 10-11-74.

Oct. 16, ORDER granting pltf. an extension of time to file a response to deft.-intervenor's Crusade for Voters of Richmond's motion for attorneys' fees until 10-25-74. (N) Wright, J. USCA, Jones, J. USDC, Green, J. USDC.

Oct. 25, MEMORANDUM by pltf. in opposition to deft.-intervenor, Crusade for Voters of Richmond, motion for attorney's fees; c/m 10-25-74. Appearance of David M. Dixon.

Oct. 30, ORDER holding in abeyance the issue of attorney's fees until decision by U.S. Supreme Court. (N) Green, J.

Dec. 19, CERTIFIED copy of ORDER U.S. Supreme Court noting probable jurisdiction.

Dec. 19, MOTION by deft.-intervenor, Curtis Holt, Sr., for clarification of Order dated July 23, 1973; attachment; c/m 12-17-74.

Dec. 27, OPPOSITION by pltf. to motion by intervenor Holt for clarification of order dated July 23, 1973; c/m 12-24-74.

**Original Complaint for Declaratory Judgment, Filed August 25, 1972, with Exhibits**

CITY OF RICHMOND, VIRGINIA
City Hall
Richmond, Virginia 23219,

Plaintiff,

v.

UNITED STATES OF AMERICA

and

RICHARD G. KLEINDIENST,
Attorney General of the United
States, individually and in his
official capacity
Department of Justice
Washington, D.C.,

Defendants

**COMPLAINT FOR DECLARATORY JUDGEMENT UNDER VOTING RIGHTS ACT**

1. This Court has jurisdiction over this action by virtue of Section 5 of the Voting Rights Act of 1965, as amended, 79 Stat. 439; 42 U.S.C. §1973c.

2. Plaintiff is a political subdivision of the Commonwealth of Virginia with respect to which the provisions of said section are in effect.



3. The plaintiff's corporate boundaries were enlarged on January 1, 1970, by a decree of a special annexation court in Chesterfield County acting pursuant to the provision of Title 15.1, Chapter 25 of the Code of Virginia of 1950, as amended. By virtue of said decree of the annexation court consisting of three circuit judges in accordance with the aforesaid annexation statutes, approximately 23 square miles of land area adjacent to the City, located in Chesterfield County, was added to the City of Richmond. The pre-annexation population of the City as of 1970 was 202,359 of which 104,207 were non-white and 98,152 were white persons. The annexation added to the City, according to the 1970 United States Census figures, 47,262 people, of which 1,557 were non-white and 45,705 were white persons. The population as of 1968 of Chesterfield County prior to annexation was 102,633 white and 9,845 non-white persons.

4. In Virginia cities are independent and not a part of the county or counties surrounding them and their boundaries may be changed only by judicial decree in accordance with the aforesaid annexation statutes or by consolidation after a majority of those voting in a referendum in each political subdivision have separately agreed thereto. The history of this boundary expansion began prior to 1959 when the plaintiff found itself in the position of needing more land for development and more revenue to finance the ever growing demand for municipal services. During this time various studies and surveys were made and discussions held with representatives of the governing bodies of Henrico County which adjoins Plaintiff generally to the east, north and west, and Chesterfield County which adjoins Plaintiff generally to the south. As a result of early discussions, the Plaintiff

and Henrico County entered into negotiations seeking the consolidation of the two political subdivisions under the provisions of Title 15.1, Chapter 26, of the Code of Virginia of 1950, as amended. Such negotiations began in September 1960, and culminated in an agreement between the two governing bodies approximately one year later. Thereafter, said agreement was submitted on December 12, 1961, to referendum in both political subdivisions in accordance with law. The voters of the Plaintiff City approved the consolidation plan, the said plan, however, was defeated because a majority of the voters in Henrico County disapproved the plan.

5. Promptly thereafter, on December 26, 1961, the City Council of Plaintiff, in accordance with the provisions of the Virginia annexation statutues, adopted two annexation ordinances requesting the convening of a three judge annexation court and seeking from said court the annexation of approximately 150 square miles of Henrico County and approximately 51 square miles of Chesterfield County, respectively. After numerous delays in pretrial procedures, including proceedings in the Supreme Court of Appeals of Virginia, the annexation suit against Henrico County began trial in June, 1963. The final result of the case was a decree awarding to the Plaintiff by the annexation court of approximately 16 square miles of land area of Henrico County which contained approximately 42,690 white persons and 660 non-white persons with financial obligations imposed upon the City, pursuant to the power of the court conferred by the annexation statutes, of approximately $55 million. City Council, in March, 1965, concluded by ordinance that it was not in the best interests of the City to accept the annexation award and, with the consent of the Court, the Henrico case was dismissed.



6. Thereafter, the annexation suit against Chesterfield County, which had been allowed to remain dormant on the docket of the Circuit Court of Chesterfield County pending the proceedings in the Henrico County suit, were brought on for hearing and, as a result of a jurisdictional plea, the case was dismissed by the annexation court. After appeal by Plaintiff City, the Supreme Court of Appeals of Virginia reversed and reinstated the case for trial. The case came on for trial in September 1968, and at a time when the evidence was nearly complete in January 1969, a mistrial was declared as a result of the local judge disqualifying himself, necessitating the appointment of a new judge and a retrial of the whole case, which began anew in May, and continued through June of 1969. By final order of the annexation court of July 12, 1969, the award of the territory of Chesterfield County hereinabove mentioned was decreed. Appeals were instituted by numerous intervenors from Chesterfield County which were denied by the Supreme Court of Appeals of Virginia. Thereafter, a motion for stay of the effective date of annexation fixed by the Virginia statutes, to-wit, January 1, 1970, and a petition for certiorari were filed by said intervenors in the Supreme Court of the United States. The motion for stay was denied separately by Justices Douglas, Marshall and Brennan, prior to January 1, 1970, the effective date of annexation. On April 20, 1970, the petition for certiorari was denied by the court.

7. On January 1, 1970, Plaintiff, pursuant to the annexation decree, took jurisdiction over the area awarded to it from Chesterfield County by said annexation court in accordance with the provisions of the annexation statutues, (*supra*), and has continued to operate, manage and supervise the area since that date.

8. On January 28, 1971, after the decision of the United States Supreme Court in *Perkins* v. *Mathews*, 400 U. S. 379 (1971), Plaintiff submitted the change resulting from the annexation decree by letter from Conard B. Mattox, Jr., City Attorney, to the Attorney General of the United States in accordance with the alternative provisions of Section 5 of the Voting Rights Act of 1965. The Attorney General interposed an objection by letter to Conard B. Mattox, Jr., City Attorney, dated May 7, 1971. Copies of said letters are hereto attached and marked Exhibits A & B, respectively. Thereafter, the Attorney General was asked by letter from the City Attorney dated August 2, 1971, to reconsider his objection since *Chavis* v. *Whitcomb*, 305 F. Supp. 1364 (1969), which he relied on in his letter of May 7, 1971, had been overruled by the Supreme Court in 403 U. S. 124 1972. By letter of September 20, 1971, the Attorney General refused again to lift his objection. Copies of said letters are filed herewith as Exhibits C and D, respectively.

9. On February 24, 1971, a class action was instituted in the United States District Court for the Eastern District of Virginia, Richmond Division, in the name of Curtis Holt, Sr., alleging primarily that the voting rights of the plaintiff's class guaranteed by the 15th Amendment had been violated by the Chesterfield annexation. The aforesaid District Court, on November 23, 1971, ruled that voting rights guaranteed by the 15th Amendment had been violated and ordered a new election of city councilmen with (7) being elected at large by the former City residents and (2) being elected at large primarily from the newly annexed area. This election order was stayed on December 6, 1971, by the United



States Court of Appeals for the Fourth Circuit. Plaintiff's class and defendant City both appealed the decision to the United States Court of Appeals for the Fourth Circuit. That court, after a hearing, held on May 3, 1972, that valid reasons existed for the annexation and that the 15th Amendment had not been violated and thus overruled the lower court's decision. Plaintiff's class then applied for a Writ of Certiorari to the Supreme Court of the United States which was denied by said Court on June 26, 1972.

10. After the writ was denied the City Attorney, by letter dated Junly 5, 1972, again asked the United States Attorney General to reconsider his objection. To date no answer has been received. Copy of this letter is attached as Exhibit E.

11. On December 9, 1971, there was instituted in the United States District Court for the Eastern District of Virginia another class action in the name of Curtis Holt, Sr. (Case Number C.A. 695-71-R) alleging *inter alia* that the Plaintiff had not complied with Section 5 of the Voting Rights Act of 1965, and that, accordingly the annexation of territory from Chesterfield County was invalid. A three-judge court was convened pursuant to §2284, Title 28 U.S.C. The plaintiff Holt in that action subsequently sought an injunction against the election officials of the City of Richmond to restrain them from holding the election for City Council members scheduled under Virginia law for the first Tuesday in May 1972. After a hearing, the three-judge District Court refused to enjoin the election, but upon application to the Chief Justice of the United States, the Supreme Court stayed the election until the further order of the Court. Such order is still in full force and effect and said case is still pending awaiting hearing on a motion for summary judgment.

WHEREFORE, Plaintiff prays that a three-judge District Court be convened pursuant to §2284, Title 28 and §1973c, Title 42 of the United States Code to hear and adjudge that the Plaintiff's annexation does not violate Section 5 of the Voting Rights Act of 1965, as amended, in that it "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color", as guaranteed by the 15th Amendment.

CITY OF RICHMOND, VIRGINIA
/s/ Conard B. Mattox, Jr.
Conard B. Mattox, Jr.
City Attorney
Daniel T. Balfour
Assistant City Attorney
Room 300, City Hall
Richmond, Virginia 23219

[Certificate of Service Omitted in Printing]

January 28, 1971

Hon. John Mitchell
Attorney General
Department of Justice
Washington, D. C.

Re: Annexation proceedings in the Commonwealth of Virginia styled *City of Richmond* v. *Chesterfield County* - Voting Rights Act of 1965



Dear Mr. Mitchell:

On January 14, 1971, the Supreme Court of the United States decided the case of *Ernest Perking, et al* v. *L. S. Matthews, Mayor of the City of Canton, et al*, (No. 46, October term, 1970). The Court, in its opinion, stated that any change in the boundary lines of cities through annexation comes within the provisions of the Voting Rights Act of 1965. The Attorney General has the responsibility of approving or disapproving any changes in voting that may be necessary as a result of annexation. As the City Attorney of the City of Richmond, I am not advised whether the decision has a retroactive effect upon annexation cases that have become final prior to the Supreme Court's decision.

The Council of the City of Richmond, on December 26, 1961, authorized and directed that a portion of the County of Chesterfield be annexed in accordance with the laws of the Commonwealth of Virginia. As directed, a suit was instituted and became final on April 20, 1970, when the Supreme Court of the United States denied a petition for a writ of certiorari.

In order for you to be fully advised of the proceedings had in the case, I am attaching hereto the following exhibits:

1. Ordinance No. 61-334-288, adopted December 26, 1961, authorizing the annexation proceedings.

2. A copy of the petition filed in the Circuit Court of the County of Chesterfield on December 27, 1961.

3. Copy of an opinion rendered on July 1, 1969, delivered from the bench by the presiding judge of the annexation court.

4. The order of annexation entered on the 12th day of July, 1959.

5. An order denying an application for a stay of the annexation proceedings issued by the Chief Justice and two Justices of the Supreme Court of Appeals of Virginia, dated December 19, 1969.

6. A letter dated December 31, 1969, from the Hon. John F. Davis, Clerk of the Supreme Court of the United States, indicating that application for a stay to Mr. Justice Marshall and Mr. Justice Brennan was denied on December 30, 1969, and that an application to Mr. Justice Douglas was denied on December 31, 1969.

7. Copy of an order entered on April 30, 1970, indicating that the Supreme Court of the United States denied a writ of certiorari.

Would you please advise me whether or not the above proceedings come within the Voting Rights Act of 1965, and if so, what steps should be followed in order to secure your approval.

Respectfully,

C. B. Mattox, Jr.
City Attorney

CBM:kh

Enc.

**Exhibit A**



May 7, 1971

Mr. C. B. Mattox, Jr.
City Attorney
Department of Law
402 City Hall
Richmond, Virginia 23219

Dear Mr. Mattox:

As you know, the Supreme Court recently held in *Perkins* v. *Mathews*, 400 U.S. 379, 388-89 (1971), that "[c]hanging boundary lines by annexations which enlarge the city's number of eligible voters . . . constitutes the change of a 'standard, practice, or procedure with respect to voting,'" within the meaning of section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. This letter concerns your submission of a 1969 annexation to the city of Richmond.

Municipal annexations are, of course, commonly undertaken for a variety of reasons and affect a number of areas of concern to local governments. Section 5 is not addressed to annexations per se; but the Attorney General is obliged under section 5 to be concerned with the voting changes produced by an annexation. In the present instance, the city of Richmond elects representatives to its governing body on an at-large basis; its population is approximately evenly divided between whites and blacks. The submitted change would increase the city's population by approximately 43,000 new residents of whom a very small minority is Negro. In the circumstances of Richmond, where representatives are elected at large, substantially increasing the number of

eligible white voters inevitably tends to dilute the voting strength of black voters. Accordingly, the Attorney General must interpose an objection to the voting change which results from the annexation.

You may, of course, wish to consider means of accomplishing annexation which would avoid producing an impermissible adverse racial impact on voting, including such techniques as single-member districts. See *Chavis* v. *Whitcomb*, 305 F. Supp. 1364 (S.D. Ind. 1969). Moreover, section 5 permits seeking approval of voting changes by the United States District Court for the District of Columbia irrespective of any previous submission to the Attorney General.

Sincerely,

DAVID L. NORMAN
Acting Assistant Attorney General
Civil Rights Division

**Exhibit B**



August 2, 1971

The Honorable John N. Mitchell
Attorney General of the United States
Department of Justice
Constitution Avenue
Washington, D. C. 20530

Dear Mr. Mitchell:

Pursuant to the requirements of Section 5 of the 1965 Voting Rights Act, I wish to re-submit to you on behalf of the City of Richmond the City's request for approval of the election of councilmen for the City at large. This re-submission and request for approval is predicated upon certain events that have taken place since Mr. David Norman's letter to me dated May 7, 1971, in which the Justice Department interposed "an objection to the voting change which results from annexation". A brief resume of the events that have occurred to date may be of some assistance to you.

The Council of the City of Richmond, on December 26, 1961, authorized and directed the City Manager and the City Attorney to institute annexation proceedings to annex to the City certain territory located in Henrico County and Chesterfield County. As directed by the Council, the City Attorney instituted annexation proceedings against both counties on December 27, 1961. Due to the fact that annexation in Virginia is a judical matter, determined by a three judge court, the City Attorney elected to try the annexation case against Henrico County first. After months of preparation and trial, the annexation court, on April 27, 1964, issued its

opinion granting to the City approximately 16 square miles of territory lying within the County in which there lived approximately 45,310 persons, of which 98 + % were white. After further agrument by counsel, the court entered on July 31, 1964, an order implementing its opinion. The Council, on March 8, 1965, declined the award of the court for the reason that the cost to the City in an amount of approximately $42,000,000 was excessive and that there was substantially no vacant land within the area so awarded for future development.

Immediately following the decision of the Council to decline the Henrico annexation award the City Attorney proceeded to try the Chesterfield annexation case. After a series of hearings involving jurisdictional matters, the suit was tried on its merits, and the City was successful in annexing 22.66 square miles of Chesterfield County in which resided 47,262 persons. The decree of the annexation court was entered on July 12, 1969, and became effective at the last moment of December 31, 1969. The United States Supreme Court, on April 20, 1970, sustained the validity of the proceedings by denying a petition for a writ of certiorari. *Deerbourne Civic & Recreational Association, et al* v. *City of Richmond*, No. 1237, October Term 1969. The Council proceeded to carry out the decree of the court and has since that date collected taxes from and rendered services in the annexed area.

Subsequent to the enactment by the Council of the annexation ordinances, but prior to the annexation decree in the Chesterfield case, Congress enacted on August 6, 1965, the Voting Rights Act of 1965, 42 U. S. C. 1973(c). At this point, as the chief legal advisor to the Council, I did not consider this Act to apply to annexation proceedings. Upon learning of the United



States Supreme Court's decision in *Perkins* v. *Matthews*, 400 U. S. 379, decided January 14, 1971, and in compliance with the Voting Rights Act, I submitted to your office on January 28, 1971, an application for approval of the changes occasioned by the annexation of the territory from Chesterfield.

By letter dated May 7, 1971, I was advised by the Honorable David L. Norman, Acting Assistant Attorney General, Civil Rights Division, that the Attorney General "must interpose an objection to the voting change which results from the annexation". Mr. Norman further advised as follows:

> "You may, of course, wish to consider means of accomplishing annexation which would avoid producing an impermissible adverse racial impact on voting, including such techniques as single-member districts. See *Chavis* v. *Whitcomb*, 105 F. Supp. 1364 (S.D.) (Ind. 1969)".

Subsequent to Mr. Norman's letter of May 7, the Supreme Court of the United States, on June 7, 1971, in *Whitcomb* v. *Chavis*, U. S. , 39 L. W. 4666, reversed the earlier holding of the United States District Court for the Southern District of Indiana, relied upon by Mr. Norman, and permitted multi-member districts.

Since Mr. Norman's letter to me of May 7, 1971, other events have transpired, including a decision of the United States District Court for the Eastern District of Virginia which bears on the City's request for your consideration.

Pursuant to the Virginia Constitution, the General Assembly of Virginia reapportioned the State into districts for the purpose of electing State Senators and Members of the House of Delegates. The Act of the

Assembly reapportioning the State was submitted to your office for approval. By letter dated May 7, 1971, addressed to The Honorable Linwood Holton, Governor of Virginia, Mr. David L. Norman, of your office, advised the Governor that the Attorney General interposed an objection to "(1) house multi-member districts in Hampton, Newport News, Portsmouth and *Richmond*" (emphasis added). Mr. Norman advised the Governor as he did me that "the technique of multi-member districts cannot be used if it tends to minimize the voting strength of racial minorities, *Chavis* v. *Whitcomb*, 305 F. Supp. 1364 (S. L. Ind. 1969)".

Subsequent to Mr. Norman's letter of May 7, and the Supreme Court's reversal of *Chavis* on June 7, by telegram dated June 10, you advised Governor Holton in part as follows:

> "In accordance with your request, we have reconsidered our objection to the multi-member aspects of the plan of reapportionment of the Virginia House of Delegates. Inasmuch as our objection was based on the decision of the United States Supreme Court in *Whitcomb* v. *Chavis*, and that decision was reversed on June 7, 1971 by the Supreme Court, our objection to the House multi-member district is hereby withdrawn."

On July 2, 1971, the District Court for the Eastern District of Virginia, four judges sitting, rendered its opinion involving the constitutionality of the reapportionment of the State of Virginia for the election from districts of members to the House of Delegates and Senate.

The opinion covered three different cases which were consolidated for the purpose of trial. These cases were as



follows: *Howell* v. *Mahan*, Civil Action No. 105-71-N; *Parris* v. *Prichard*, Civil Action No. 111-71-A; *DuVal* v. *Prichard*, Civil Action No. 174-71-R. The court, in its opinion noted that "the *Thornton* plaintiffs object that black residents of several metropolitan areas are denied full voting strength by multi-member districts."

In answering this contention, the Court stated:

> "In *Whitcomb* v. *Chavis*, *supra*, U. S. , 39 L. W. 4666 (June 7, 1971) multi-member districts are declared not per se unconstitutional. Therefore, the Assembly's adoption of the representational theory which embodies multi-member rather than single-member districts is accepted. We are not unaware of the preference for single-member districts in 'large' areas expressed in *Connor* v. *Johnson*, U. S. , 39 L. W. 3535, 3535-3536 (June 3, 1971), but we do not think this decision is preclusive here."

The Court found that the reapportionment of the State insofar as it relates to the City of Richmond would not be altered.

In this respect the Court said:

> "33. Thirty-third: Five delegates; existing population 249,621 – a deviation of -3.4% (calculated with reference to the floater district as District Thirty-five) – consisting of the City of Richmond. This will not be altered."

The multi-member district for the City of Richmond, for the purpose of electing five delegates encompasses the exact boundaries of the City from which all members of Council are elected. It does not seem that there should be an objection to the election of nine councilmen from the

same geographical area, and there be no objection to the election of five members to the House of Delegates from the same area. For these reasons, we respectfully urge you to reconsider the City's request for approval of the election of councilmen at large as has been the practice since 1948.

Respectfully submitted,

C. D. Mattox, Jr.
City Attorney

CBM:kh

**Exhibit C**



Mr. C. B. Mattox, Jr.
City Attorney
Department of Law
402 City Hall
Richmond, Virginia 23219

Dear Mr. Mattox:

This is in response to your resubmission on August 2, 1971, of the 1969 annexation to the City of Richmond for reconsideration pursuant to Section 5 of the Voting Rights Act. An objection was interposed to the initial submission by my letter of May 7, 1971.

We have reviewed and considered the additonal information you furnished, as well as the comments and views expressed by yourself and Mr. Lewis F. Powell, Jr., who submitted a memorandum in support of the resubmitted change, and the recent findings announced by Judge Merhige in pending litigation involving this annexation. While we found this additional material both relevant and useful, we find no basis for withdrawing our objection.

Although, as you point out, the intervening decision of the Supreme Court in *Whitcomb* v. *Chavis*, 403 U.S. 124, did recognize that multi-member legislative districts are not unconstitutional *per se*, we do not believe that opinion is dispositive of issues raised by the Richmond annexation. In our view, considering all the available facts and circumstances, the annexation of a large, almost exclusively white area does have a discriminatory racial effect on voting in the context of an emerging black majority electorate, at-large council elections, and evidence of racial purpose and effect introduced in a federal court proceeding. It is therefore objectionable under Section 5 of the Voting Rights Act.

We would like to reiterate our view that the objection of the Attorney General under the Voting Rights Act relates only to voting and election aspects of a proposed change and, therefore, need not necessarily invalidate this entire annexation. Thus, as we have suggested before, one means of minimizing the racial effect of the annexation and still allowing for the city's growth and expansion would be to adopt a system of single-member, non-racially drawn councilmanic districts in place of at-large voting. Should this or any other change be enacted and submitted to the Attorney General, we will make every effort to give it prompt consideration.

Sincerely,

/s/DAVID L. NORMAN
DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

**Exhibit D**



July 5, 1972

The Honorable Richard Kleindienst
Attorney General of the United States
Department of Justice
Constitution Avenue
Washington, D. C. 20530

Dear Mr. Kleindienst:

On August 2, 1971, as counsel for the City of Richmond, I requested The Honorable John N. Mitchell, then Attorney General of the United States, to reconsider an objection interposed on May 7, 1971, by the Justice Department to the voting change which resulted from the annexation by the City of Richmond of certain territory formerly located in Chesterfield County. In response to my request, The Honorable David L. Norman, Assistant Attorney General, Civil Rights Division, on September 30, 1971, advised that the Attorney General had reviewed the additional information as submitted on August 2, and had considered the findings announced by The Honorable Robert R. Merhige, Jr., Judge of the United States District Court for the Eastern District of Virginia, in the case styled *Curtis Felt, Sr., et al* v. *City of Richmond, et al*, Civil Action No. 151-71-R.

It is the City's view that the Holt case should be considered as it has now become final. The District Court, on November 23, 1971, released a memorandum which clearly sets forth the Court's views that were considered and argued on appeal. For your convenience a copy of this memorandum is attached. The City and

Plaintiff Holt appealed to the United States Court of Appeals for the Fourth Circuit. The District Court had ordered a special election to be held on January 25, 1972, which in effect would elect nine councilmen, seven from one ward or district, and two from a second ward or district. The Fourth Circuit stayed this special election by order entered on December 8, 1971. The Fourth Circuit heard the case and rendered its decision on May 3, 1972. The Court found that there was no violation of the Fifteenth Amendment and reversed Judge Merhige's order. The Plaintiff Holt appealed the decision of the Fourth Circuit to the United States Supreme Court, which denied the Writ of Certiorari on June 26, 1972.

It is apparent that the Voting Rights Act of 1965 is a codification of the rights guaranteed by the Fifteenth Amendment as indicated in the title of the Act: "An Act to enforce the Fifteenth Amendment to the Constitution of the United States and for other purposes." The Act speaks in terms of enforcing the "guarantees of the Fifteenth Amendment."

In view of the purposes stated in the Act and in view of the findings of the Fourth Circuit Court of Appeals, the denial of the Writ by the Supreme Court, we respectfully request that the objection interposed by the Justice Department by letter dated May 7, 1971, be withdrawn.

Respectfully submitted,

/s/ C. B. Mattox, Jr.
C. B. Mattox, Jr.
City Attorney

CBM:kh

Enc.

**Exhibit E**



**First Amendment to Complaint, Filed November 9, 1972**

[Caption omitted in printing]

**PLAINTIFF'S FIRST AMENDMENT TO COMPLAINT**

Plaintiff, City of Richmond, Virginia, hereby makes an amendment to the Complaint previously served and filed herein, as follows:

1. On page 5 of the Complaint, after the sixth line and Paragraph No. 7, add the following paragraph:

"7.a. Plaintiff desires and intends to hold an election at large as has historically been done, allowing the citizens of Plaintiff's total area to vote. Insofar as Plaintiff's annexation may constitute a voting qualification or prerequisite to voting, or effect a standard, practice, or procedure with respect to voting within the meaning of the Voting Rights Act of 1965, such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color."

[Signatures and certificate of service omitted in printing]

**Answer of United States, with Exhibit**

[Caption omitted in printing]

**ANSWER OF DEFENDENTS**

For their answer to the Complaint filed herein, the defendants, United States of America and Attorney

General Richard Kleindienst, state:

1. Defendants admit the allegations contained in paragraphs 1, 2, 6, 7, and 9 and of the Complaint.

2. Defendants admit the allegations contained in paragraph 3 of the Complaint except that they can only admit that the population statistics alleged are approximately correct.

3. Defendents admit the allegations contained in paragraph 4 except that the allegation contained in the second sentence is denied for lack of sufficient information to form a belief as to the truth thereof.

4. Defendants admit the allegations contained in paragraph 5 of the Complaint except that, for lack of sufficient information to form a belief, they deny that portion of the last sentence alleging the reason for the dismissal of the Henrico annexation suit.

5. Defendants admit the allegations contained in paragraph 8 of the Complaint except the allegation that the Attorney General, in his letter of objection dated May 7, 1971, relied on *Chavis* v. *Whitcomb*, 305 F. Supp. 1364, is denied.

6. Defendants admit the allegations contained in paragraph 10 of the Complaint. Defendants aver further that after the Complaint was filed in this case a response was sent to the City Attorney advising that in view of the pendency of this lawsuit reconsideration of the Attorney General's objection had been discontinued. Copy of letter attached as Exhibit A.

7. The allegations contained in paragraph 11 are admitted. The defendants aver further that a hearing was held in the lawsuit there described on October 25, 1972.



By way of affirmative defense defendants allege that the plaintiff has failed to state a claim upon which relief may be granted in that the Complaint fails to allege that the voting change involved "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color" as required by the Voting Rights Act, 42 U.S.C. 1973c.

Having fully answered the allegations in the Complaint, the defendants demand a judgment of dismissal or other such relief as the Court deems appropriate.

/s/ GERALD W. JONES
GERALD W. JONES
ROBERT R. RUSH
Attorneys
Department of Justice
Washington, D. C. 20530

## EXHIBIT A

[Certificate of service omitted in printing]

Mr. C. B. Mattox, Jr.
City Attorney
City of Richmond
Department of Law
Richmond, Virginia 23219

Dear Mr. Mattox:

This is in response to your July 5, 1972 letter to the Attorney General asking for reconsideration of our May 7, 1971 objection to the voting change which resulted from the annexation by the City of Richmond of territory formerly located in Chesterfield County.

As you know, a lawsuit seeking a declaratory judgment under Section 5 of the Voting Rights Act was filed in the United States District Court for the District of Columbia by the City of Richmond on August 25, 1972. In view of that development we discontinued our reconsideration since the matter is now pending before the court.

Sincerely,

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division



## Answer of United States to Amendment to Complaint

[Caption omitted in printing]

### DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDMENT TO COMPLAINT

The defendants, United States of America and Attorney General Richard G. Kleindienst, for their Answer to the Amendment to the Complaint, which adds paragraph 7.a., state:

Defendants admit the allegations contained in the first sentence of paragraph 7.a. except for that part of the sentence which alleges elections have been held historically at-large, which the defendants deny.

Defendants deny the second sentence of paragraph 7.a. Further, defendants aver that the annexation does constitute a voting qualification or prerequisite to voting or a standard, practice or procedure with respect to voting within the meaning of the Voting Rights Act of 1965.

/s/GERALD W. JONES
GERALD W. JONES
ROBERT R. RUSH
Attorneys
Department of Justice
Washington, D. C. 20530

[Certificate of service omitted in printing]

**Opinion of Special Three-Judge Annexation Court, sitting in the Circuit Court of Chesterfield County, dated July 1, 1969, in *City of Richmond* v. *County of Chesterfield, et al.***

**VIRGINIA:**
**IN THE CIRCUIT COURT OF CHESTERFIELD COUNTY**
**City of Richmond, Petitioner**
**v.**
**County of Chesterfield et al, Defendants**

## OPINION

Until June 21, 1969, when the County offered to introduce evidence of an agreement entered into by the Mayor of Richmond (with the approval of six of the nine members of the City Council) and the Chairman of the Board of Supervisors (with the approval of three others of the six members of the Board of Supervisors of the County), the hearing of this suit followed the usual pattern of big city annexation proceedings.

The City's petition was filed July 2, 1962, and for various reasons, including an appeal from an order of dismissal (208 Va. 278), trial on the merits was not commenced until September, 1968 and was not concluded until the final argument on June 26, 1969.

The City sought to annex an area containing some 51 square miles which in 1968 was estimated to contain about 72,000 people of a total County population of about 110,000. The school population figures were even



more striking: Total County 30,000; Annexation Area 20,000.

Richmond has had no annexation on the South side of the James River since 1942, and, as is the case of almost all large cities, there has been a substantial growth of urban residential population in the area adjoining the City's boundaries. As usual, this growth has been to some extent at the cost of city population, because of the lower cost of residential properties as well as the lower taxes in the County. In fact, the growth in the annexation area, especially during the six year period from 1962 to 1968 was described by some of the witnesses as "phenomenal". Our views (we took several, including an extensive helicopter ride), together with the evidence adduced leave no doubt in our minds that the entire annexation area is rapidly becoming a densely populated urban community. Of course, the closer to Richmond the more the land has already been developed for residences and the usual businesses. It must be observed that the land in the entire annexation area is characteristically urban rather than rural.

Chesterfield County has developed an excellent modern government which satisfactorily supplies its citizens with all needed services, such as sewage disposal, public water, police protection, etc., and operates at a cost which results in taxes considerably lower than those of the City. Small wonder that the residents of the annexation area are happy in their present status and oppose City annexation with its attendant increase in taxes.

At the outset, as usual in these cases, the County took three positions: First, that the City is not entitled to any annexation; second, if there is to be any annexation the

area should be smaller than that sought; and third, that the City's estimate of compensation to the County is wholly inadequate. In fact there was a disparity of almost $50,000,000 between the two.

E. I. Du Pont de Nemours & Company intervened to oppose annexation of its property.

Some 12,000 individuals and eleven civic organizations filed intervening petitions. The substance of their positions was that there should be no annexation of any territory.

The Bon Air Transit Company intervened (under the provision of Code Sec. 15.1-1042 (g) for the purpose of advancing a claim for compensation for loss anticipated as a result of the annexation.

The Chesterfield Refuse Company intervened for the purpose of advancing a claim for compensation for pecuniary loss anticipated as the result of the annexation.

Newton Ancarrow intervened for the purpose of opposing the City's undertaking of additional sewage treatment at its Deepwater Plant.

It seems to us that it is copiously apparent that Richmond is entitled to some annexation in this case. To deny this is to say that the City can never grow into Chesterfield County. Obviously cities must in some manner be permitted to grow in territory and population or they will face disastrous economic and social problems. The exodus of productive citizens and the influx of the economically underprivileged create an intolerable condition that must have some means of amelioration.

The City is fully capable, both managerially and financially, of supplying some additional territory with sound city government. The evidence overwhelmingly convinces us of the necessity for an expediency of some annexation:



> ". . .Considering the best interests of the County and the City *** . . . the best interests, services to be rendered and needs of the area proposed to be annexed, and *the best interests of the remaining portion of the County*." (Underscoring supplied) (Code Sec. 15.1-1041(b).

The individuals who live in the annexed area, for the time being, will probably not receive any higher degree of service than supplied by the County. The contention that they do not need the City was answered in *Henrico County* v. *Richmond*, 177 Va. 754, 788, 15 S.E. (2d) 309:

> "Moreover, it is no answer to an annexation proceeding to assert that individual residents of the county do not need or desire the governmental services rendered by the city. A county resident may be willing to take a chance on police, fire and health protection, and even tolerate the inadequacy of sewerage, water and garbage service. As long as he lives in an isolated situation his desire for lesser services and cheaper government may be acquiesced in with complacency, but when the movement of population has made him a part of a compact urban community, his individual preferences can no longer be permitted to prevail. *It is not so much that he needs the city government as it is that the area in which he lives needs it*." (underscoring supplied)

People who establish their residences near a large city must anticipate that eventually they will become a part of that municipality.

Although there is no precise definition of the term "expediency," the best we have been able to find is that pronounced in substance in *Norfolk County* v. *Ports-*

*mouth*, 186 Va. 1032, 1043, 1044, 45 SE (2d) 136. Expedient means "advantageous" and in furtherance of the policy of the State that "urban areas should be under urban government and rural areas under county government".

The County's witnesses divided the annexation area into forty-three study areas for the obvious purpose of persuading the Court that the entire area sought should not be granted, but the Court should award some combination of such study areas which would constitute a considerable expansion of the City's boundaries and at the same time lessen the violence of the impact of annexation upon the County's school and public utility systems as well as all of its governmental agencies.

We are aware of no big city case in which the annexation Court has granted the total area sought or the exact amount of compensations contended for by either party, and both the City and County may have anticipated that the Court might establish some boundary within the area sought which it considered to be reasonably adapted to "balance the equities", giving to the City enough territory for its needs in the reasonably near future and at the same time permitting the County to retain its present enviable status as a flourishing, capable, viable government.

Not only have the Annexation Courts compromised as to the boundary lines but even more so as to the compensation by the City to the County. It is exceedingly difficult to arrive at the values of public properties. Different experts have widely divergent views on the subject even under the yardsticks prescribed by Code Sec. 15.1-1043. The City's experts are always much more conservative than the County's. But the widest differences of all are usually to be found in the expert's



estimates of . . . . ."prospective loss of net tax revenue during the next five years". . . . . This is certainly true in the instant case.

In the present case, until the evidence of the so-called agreement was offered, the Court was faced with the problem of determining the annexation line and fixing the amount of compensation. If the 51 square mile territory were granted the Court would have to decide as to whose experts were more convincing as to the County's compensation. If the Court awarded too little the people remaining in the County would suffer; if too much, the County people would be enriched at the expense of the City people. The Court must "balance the equities". If the City felt that the Court had not "balanced the equities", it might, with the consent of the Court, decline to accept the annexation. Code Sec. 15.1-1044.

Decisions such as this point up the fact that an annexation Court exercises not only judicial, but also some legislative functions. This was frankly conceded by the majority opinion in *Henrico County* v. *City of Richmond*, 106 Va. 282, 55 SE 683.

These things must have been on the minds of the chief executives of the two governments when they decided to negotiate in the attempt to arrive at an agreement as to what they considered to be to the best interests of their respective constituents.

The two governing bodies had experienced a growing lack of cooperation which almost amounted to animosity as the too-long confrontation of this case progressed. The City's failure to supply the needs of the growing area for water and sewer prompted the County to create excellent facilities to supply such needs, which facilities in the eyes

of the County would be seriously impaired as to efficiency and value if the City's plan of annexation were adopted.

Mr. Horner, the Chairman of the Board of Supervisors of the County, testified that one of the desires which prompted the agreement was to promote a better spirit of cooperation and friendliness between the City and the County. We think that this attitude is both praiseworthy and practical.

So far as we can ascertain, a compromise between two governing bodies in an annexation case is unprecedented. While the City objected to the admission of evidence of the agreement and moved to strike it at the time of its presentation, the objection and motion were later withdrawn. Both sides admit that the agreement is not binding upon the Court.

After mature consideration, we feel that the agreement is entitled to great weight. It must be remembered that the parties to the agreement perform the legislative functions of their governments as duly elected representatives of the people. When they decide that their constituents are benefitted by an action, such a decision should not be treated lightly. Of course, it must not be overlooked that they have not acted officially by ordinance or resolution.

This, of course, does not mean that this Court should abdicate its responsibility to decide this case on the merits, but it does mean that in our deliberations we must seriously consider the evidence of what these officials have conscientiously agreed upon after what was described in the arguments as hours of tedious negotiation and "blood, sweat and tears".

While the original agreement specified the annexation



line with reasonable precision and set forth the exact amount of compensation to be paid the County, it was seriously lacking in detailed solutions of the school and utility problems. It was apparent that, unless the County and City could agree upon some method of temporary continuation of the County's plans for the education of the children in the annexed area, a serious disruption would occur.

The two parties after consultation with their school officials and engineers solved these problems by an implementing agreement, dated June 25, 1969, marked County Exhibit No. 108.

We have studied the finalized agreement and have viewed the proposed boundary line, and find that it meets all requirements of necessity and, most important of all, expediency. The acquisition of the some 23 square miles of territory and some 43,000 people will solve many of the City's problems, both now and for some time to come. The impact upon the remainder of the County will not be such as drastically to impair its functionins as a modern governmental agency. The compensation appears adequate and not excessive. The conditions under which the schools will be operated and the school building program continued would appear to be designed to prevent the disruption of the children's education which originally caused us deep concern. The agreement as to the operation of utilities seems practical.

In sum, we believe that the boundary line set forth in the agreement should be the annexation line and that all terms and conditions specified should constitute the conditions of annexation verbatim, and we so adjudge and decide.

It must be remembered that this Court remains in existence for five years to "enforce the performance of the terms and conditions under which annexation was granted" . . . . . Code Sec. 15.1-1047.

We are of opinion that this Court is without jurisdiction to make an award of compensation for loss of business by Chesterfield Refuse Company.

It is our opinion that the effective date of the annexation order should be midnight, December 31, 1969.

**Exhibits from *Holt* v. *City of Richmond*, 334 F. Supp. 228 (E.D.Va. 1971)**

**A. "Off the Record Conference in Chambers" – Originally Defendant's Exhibit 16 – Annexation Transcript, pp. 3234-3, 10, 11, 19, 20, 23, 25.**

[3234]:

[3] As far as I am concerned, agreement has been reached. We are seeking the advice of this Court on the proper mechanics of concluding the agreement.

JUDGE ABBOTT: Can I ask a few questions?

MR. THORNTON: Yes, sir. This is my statement and I make it here. These gentlemen may have a lot of questions about mechanics.

JUDGE ABBOTT: Well, first, I would like to say that we are pleased that you have gotten together and settled your differences. I think it might in the end create good



will and harmony between the people but I think mechanics is a question to consider.

Now, you say you gentlemen have agreed. Does that mean the Board of Supervisors themselves will have to take formal action on it? Does that mean the City Council will have to take formal action on it? And what are we going to do about protestors?

MR. THORNTON: If your Honors please, of course, this is something that has to be considered as we continue to see if we can resolve our differences.

* * *

[10] The chances are we are going to approve it but sometimes things come up that you can't approve. I have been in several annexation cases in which counsel have agreed that it wasn't practical, you had to change it a little bit; it didn't affect the outcome of the case any but it made things more practical or equitable.

Just listening to what you have said this morning, it would be my suggestion that we just proceed with the case and then when the evidence is in, let us hear the Protestors and then you can tell us what your agreement is and we can make our decision accordingly, and in that way the Intervenors won't feel like they have been kicked around or left out.

There would be no need for the City Council to have a meeting, it wouldn't be necessary for the Board of Supervisors to have a meeting. That would be a decision for the Court.

The only thing about it is that either side could appeal, which would be perfectly all right; I suppose they could do it anyway, I don't know.

MR. MAYS: It would certainly be our suggestion, your Honor, to go forward with the [11] case because,

in the first place, it would look pretty odd to recess for three days and then get the Intervenors in on Thursday. That would really be odd.

JUDGE ABBOTT: Let us go ahead with the case and while we are hearing the Intervenors let the City and the County present to the Court in writing which we will hold here confidentially in the office when you have a proposition that you all have agreed upon, and then when we consider the case we will have it in mind.

MR. THORNTON: I will do that right now.

MR. MAYS: No, sir; no, sir. I hope you will not make that observation. Now, it is not necessary. You have three days of trial and you have two days of Intervenors' testimony, and I see no reason why we should make a record of the discussion that have gone on.

It is the City Attorney's position that we don't have a deal at all. Now, he may or may not be right. We will see what he says. I have not been in negotiations, I have seen nothing.

MR. THORNTON: Let me speak to this, . . . [19] where the press and the radio can get it. When you write it, just hand it to me instead of laying it on the desk and I will give it to you gentlemen later on. I just don't want the press getting ahold of what we have been talking about in here because the whole thing will just – it would be wrong.

MR. MAYS: Yes, sir. That's the reason I suggest, sir, that if this is attempted to be put in as evidence we will certainly object to the whole thing being opened up and we think we would be in for a great controversy.

JUDGE ABBOTT: I don't think we ought to put this in evidence but just proceed with the trial as if you hadn't been in here.



MR. MAYS: Yes, sir.

JUDGE ABBOTT: Then when the evidence is all in you can submit to us what your agreement is.

MR. MAYS: All right, sir.

MR. THORNTON: Your Honor – excuse me, your Honor.

JUDGE MARSHALL: That's all right, I want to hear everybody before I voice my opinion.

MR. THORNTON: If your Honor please, [20] this would all be well and good had we not – as you say, proceed as if nothing had happened. Well, something did happen and something of very great significance, as far as we are concerned.

The Court is worrying about the interve ors. I say to the Court, frankly, if we have got to go apace on the evidence which was planned and the people who are going to take the stand, people that have to take the stand, as far as the whole case of Chesterfield County is concerned, we are not going to finish by the day the Intervenors are scheduled to come up.

JUDGE ABBOTT: Well, we will just have to take it in stride.

MR. THORNTON: All right, sir.

JUDGE ABBOTT: I might suggest that if you have entered into an agreement that the City need not cross examine so extensively as you have.

MR. MAYS: We hadn't planned to, your Honors.

JUDGE ABBOTT: And that would certainly save some time.

MR. THORNTON: If your Honor please, you stress the fact, and Mr. Davenport backed me up, . . .

* * *

[23] MR. MATTOX: Yes, sir, but no one is going to submit to you, Judge Abbott, or to this Court, no one

on behalf of the City of Richmond, no one can represent to this Court that it is an agreement nor neither can anyone submit that to the Court without the action of the City Council.

JUDGE ABBOTT: Oh, I see the point you are making now.

MR. MATTOX: We can't do it and we wouldn't do it.

JUDGE ABBOTT: There has been talk of a settlement that Council have agreed on that the City hasn't agreed to it formally or officially.

MR. MATTOX: Yes, sir.

JUDGE ABBOTT: I see the point you are making.

JUDGE WHITLEY: I have got a question here. Suppose you come in and say this is what legal counsel have agreed on, then we don't have the benefit of argument as we have in an adversary proceeding; we are not going to be exercising our discretion, we are going to be taking your decision. And without fully arguing the case, we won't have the facts and the figures to really decide it on.

* * *

[25] Board or the Council?

MR. THORNTON: Yes, sir.

JUDGE MARSHALL: I would like to say, gentlemen, that would hold great weight with me in my decision if it was shown openly that the Mayor and six members of the Council had agreed and that the Board of Supervisors had agreed.

I would hesitate to overrule their agreement.

JUDGE ABBOTT: I think all of us would.

MR. THORNTON: Yes, sir. And, if your Honor please —

JUDGE MARSHALL: It might be that I would but I would give it great weight. However, I would want it



made publicly; I would want it made in open court.

MR. THORNTON: Precisely what I intend to do.

JUDGE MARSHALL: And I had contemplated that would be done at the time that was set for argument after all the evidence had been introduced. I haven't had cause to think about the effect on the intervenors or what their attitude would be, whether or not they would be entitled to additional . . .

* * *

### B. Defendant's Exhibit 29[A], pages 4579, 4580, 4585, 4586

[4579] JUDGE WHITLEY: In other words, the area that is within the Horner-Bagley line contains a large part of what is known as Bon Air area and some of that is left out?

THE WITNESS: The old Bon Air is left in the County, which used to be a resort place for rich people in Richmond years ago. That is left in the proposed, in the County on the proposed line, but Southampton, Oxford Addition, Huguenot Farms, Traylor Estates, all of that is Bon Air, too.

JUDGE ABBOTT: Explain to the Court, it may be the other two members of the Court understand it but I don't, what is going to happen to the water services and the sewer services within the Horner-Bagley line? Who is going to operate the water, who is going to operate the sewerage or take care of the sewerage? Have you worked out those details?

THE WITNESS: Yes, sir. They have been worked out and in the spirit of cooperation and mutually.

As to water, each can handle their own with no problem. It may be in the transition we would [4580] have to sell the City a little water until they could get lines reorganized, and perhaps the City would want to continue to sell us a little water in certain places.

In our sewer, that's a situation where they propose to ultimately let the City serve the natural drainage areas of sewers that would come from the County, and the County would serve the City where their sewage would drain into trunks that would lead to the Falling Creek disposal plant.

JUDGE ABBOTT: You all agreed on that?

THE WITNESS: Yes, sir.

JUDGE ABBOTT: Now, about school children? Have you agreed about educating these children within this line that you have agreed on? And those who live outside the line?

THE WITNESS: Yes, sir.

JUDGE ABBOTT: About going back and forth to school?

According to the evidence here, the school children are the ones that it seems like are going to suffer most right here.

THE WITNESS: Sir, we have talked about that at length, in fact, spent a good part of . . .

* * *

[4585] Now, this property is not developed on either side of this road at the present time except for some large homes with large acreages.

JUDGE ABBOTT: And you and the City have agreed on the water and sewerage operations after this takes effect, if it does take effect?

THE WITNESS: Yes, sir. We have.



JUDGE ABBOTT: All right. Suppose you can't agree?

THE WITNESS: As I understand the proposition that will be submitted at a later time, it will include a paragraph that it is agreeable to both parties that the rates will be submitted for arbitration.

JUDGE ABBOTT: All right. Now, on this debt the City is to pay –

MR. THORNTON: It's not the total on that sheet. It's three million more on that sheet.

JUDGE ABBOTT: The City is to pay so much in cash.

Now, have you all agreed on the City assuming bond payments? Some of these bonds are revenue bonds for sewer and water and in that case the County is not liable for the bonds at all, the revenue takes [4586] care of it. How are you going to work that out?

THE WITNESS: The sewer bonds, sir, are general obligation bonds.

JUDGE ABBOTT: They are?

THE WITNESS: Yes, sir.

**By Judge Abbott:**

Q. But the water isn't.

A. Water is not; that's revenue bonds. And it is proposed that according to the per cent that they worked out – it has been worked out – of the debt that each time the payment came up that they would pay their pro-rata part of the principal and interest at the time payment was due, which would have been each year or each time a payment was due that this per cent of the debt that is worked out they will pay the pro-rata part of the debt that was due at that time.

Q. I guess that's the only way you could work it out.

A. Yes, sir.

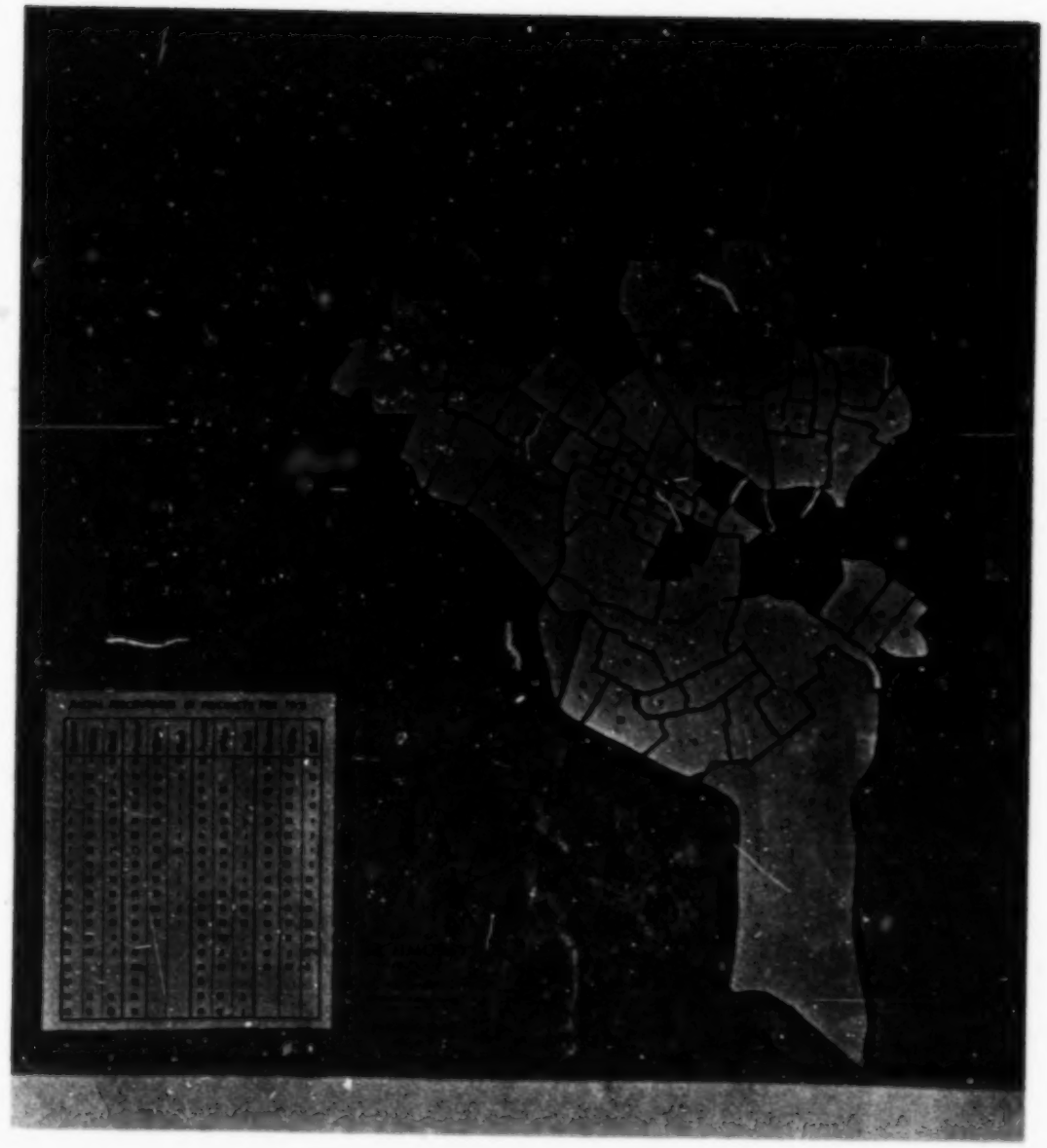
Q. But you and the City are in full agreement on all these details?

A. Yes, sir, to the best of my knowledge we are in full agreement.

Would it be that the Court – you see, . . .

* * *





C. Plaintiff's Exhibit 1, pp. 1, 2, 3, 4 – Racial Population Maps for 1940, 1950, 1960 and 1971.

RACIAL PERCENTAGES BY PRECINCTS FOR 1930
CITY OF
RICHMOND
VIRGINIA
Y-6712-B

RACIAL PERCENTAGES BY PRECINCTS FOR 1960
CITY OF
RICHMOND
VIRGINIA
Y-6712-B

## Plaintiff's Exhibit 2 – Census Tabulations for 1930 through 1970, with Intercensus Estimates.

Population of the City of Richmond, Virginia, 1930-1970

| | Total | White | % | Nonwhite | % |
|---|---|---|---|---|---|
| 1930 Census | 182,929 | 129,871 | 71% | 53,058 | 29% |
| 1940 Census | 193,042 | 131,706 | 68% | 61,336 | 32% |
| 1942 Annexation | | | | | |
| 1950 Census | 230,310 | 157,228 | 68% | 73,082 | 32% |
| 1954 | 240,492 | 162,145 | 67% | 78,347 | 33% |
| 1955 | 238,707 | 152,520 | 64% | 86,187 | 36% |
| 1956 | 240,744 | 152,181 | 63% | 88,563 | 37% |
| 1957 | 237,219 | 146,643 | 62% | 90,756 | 38% |
| 1958 | 238,303 | 145,643 | 61% | 92,511 | 39% |
| 1960 Census | 219,958 | 127,627 | 58% | 92,331 | 42% |
| 1961 | 220,188 | 125,208 | 57% | 94,980 | 43% |
| 1962 | 220,555 | 123,132 | 56% | 97,423 | 44% |
| 1963 | 221,150 | 122,075 | 55% | 99,075 | 45% |
| 1964 | 219,205 | 119,028 | 54% | 100,177 | 46% |
| 1965 | 219,065 | 118,952 | 54% | 100,113 | 46% |
| 1966 | 217,671 | 113,333 | 52% | 104,338 | 48% |
| 1967 | 216,456 | 111,112 | 51% | 105,344 | 49% |
| 1968 | 216,451 | 108,398 | 50% | 108,053 | 50% |
| 1969 | 217,527 | n.a. | | n.a. | |
| 1970 Census | 249,621 | 143,857 | 58% | 105,764 | 42% |
| 1970 Without Annexation | 46,262 | 45,707 | 98.8 | 555 | 1.2% |
| | 203,359 | 98,150 | 48% | 105,209 | 52% |

Note: Annexation by Richmond from Chesterfield and Henrico in 1941.
Annexation by Richmond from Chesterfield in 1970.

n.a. Not Available.

Source: U.S. Bureau of Census; intercensal estimates prepared by the Bureau of Population & Economic Research, University of Virginia.

Plaintiff's Exhibit 3, a through n – Councilmanic Election Returns for City of Richmond, 1960-1970.

3-A

COUNCILMANIC ELECTION – June 14, 1960

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | Sheppard | RCA & Crusade | White | 14,879 | 53.1 |
| 2 | Woodward | RCA & Crusade | White | 14,096 | 50.7 |
| 3 | Sadler | RCA & Crusade | White | 13,435 | 48.2 |
| 4 | Rudd | RCA & Crusade | White | 12,611 | 45.4 |
| 5 | Johns | RCA & Crusade | White | 11,389 | 40.9 |
| 6 | Ford | RCA & Crusade | White | 10,988 | 39.5 |
| 7 | Throckmorton | Ind. & Crusade | White | 10,707 | 38.5 |
| 8 | Garber | Ind. & Crusade | White | 10,674 | 38.3 |
| 9 | Smithers | RCA & Crusade | White | 10,574 | 38.0 |
| 10 | Bagley | Independ. | White | 10,550 | 37.9 |
| 11 | Heberle | Independ. | White | 10,196 | 36.7 |
| 12 | Macon | Independ. | White | 10,105 | 36.4 |
| 13 | Herrink | Independ. | White | 9,111 | 32.7 |
| 14 | Proctor | Independ. | White | 9,001 | 32.4 |
| 15 | Allen | Independ. | White | 8,909 | 32.0 |
| 16 | Carwile | Independ. | White | 8,752 | 31.5 |
| 17 | O'Ferrall | Independ. | White | 8,510 | 30.6 |
| 18 | Williams | Independ. | White | 8,325 | 29.9 |
| 19 | Jenkins | Independ. | White | 2,113 | 7.6 |
| 20 | Thomas | Independ. | White | 1,910 | 6.9 |
| 21 | Anthony | Independ. | White | 1,401 | 5.0 |
| 22 | Brock | Independ. | White | 1,256 | 3.7 |

TOTAL VOTE 27,823



3-B

COUNCILMANIC ELECTION – June 12, 1962

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | Haberle | Crusade | White | 11,348 | 50.9 |
| 2 | Sheppard | Crusade & RCA | White | 11,184 | 50.0 |
| 3 | Woodward | Crusade & RCA | White | 10,353 | 46.4 |
| 4 | Throckmorton | Independ. | White | 10,201 | 45.8 |
| 5 | Bagley | RCA | White | 9,772 | 43.8 |
| 6 | Smithers | Crusade & RCA | White | 9,493 | 42.5 |
| 7 | Ford | Crusade & RCA | White | 9,295 | 41.6 |
| 8 | Herrink | Crusade | White | 9,200 | 41.3 |
| 9 | Sadler | Crusade & RCA | White | 8,960 | 40.3 |
| 10 | Johns | Crusade & RCA | White | 8,639 | 38.8 |
| 11 | Newsome | Crusade | Black | 7,903 | 35.5 |
| 12 | DeBerry | RCA | White | 7,598 | 34.1 |
| 13 | Rudd | RCA | White | 7,463 | 33.5 |
| 14 | Covey | Independ. | White | 6,779 | 30.4 |
| 15 | Carwile | Independ. | White | 6,240 | 28.0 |
| 16 | Sullivan | Independ. | White | 6,113 | 27.4 |
| 17 | Elgert | Independ. | White | 5,833 | 26.2 |
| 18 | Gray | Independ. | White | 1,677 | 7.5 |
| 19 | Smith | Independ. | (?) | 1,254 | 5.7 |
| 20 | Jenkins | Independ. | White | 1,184 | 5.3 |
| 21 | Brock | Independ. | White | 1,117 | 5.0 |
| 22 | McGehee | Independ. | White | 1,004 | 4.5 |
| 23 | Poupore | Independ. | White | 893 | 4.0 |
| 24 | O'Brien | Independ. | White | 861 | 3.9 |
| 25 | Howard | Independ. | White | 656 | 2.9 |

TOTAL VOTE 22,337

## 3-C

COUNCILMANIC ELECTION – June 10, 1964

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | Sheppard | RF | White | 18,042 | 58.3 |
| 2 | Cephas | Crusade | Black | 16,512 | 53.4 |
| 3 | Wheat | RF | White | 15,965 | 51.6 |
| 4 | Anderson | Independ. | White | 15,135 | 48.9 |
| 5 | Miller | RF | White | 13,886 | 44.9 |
| 6 | Crowe | RF | White | 13,846 | 44.8 |
| 7 | Bagley | Independ. | White | 13,333 | 43.1 |
| 8 | Throckmorton | Independ. | White | 12,860 | 41.6 |
| 9 | Habenicht | RF | White | 12,780 | 41.4 |
| 10 | Hill | RF | White | 12,211 | 39.5 |
| 11 | Heverle | Independ. | White | 12,186 | 39.4 |
| 12 | Louthan | RF | White | 11,887 | 38.5 |
| 13 | Wilson | RF | White | 11,747 | 38.0 |
| 14 | Smithers | Independ. | White | 11,574 | 37.5 |
| 15 | Garber | Independ. | White | 10,474 | 33.9 |
| 16 | Herrink | Independ. | White | 8,634 | 27.9 |
| 17 | Carwile | Independ. | White | 8,228 | 26.6 |
| 18 | Covey | Independ. | White | 6,983 | 22.6 |
| 19 | Eggleston | Independ. | Black | 6,396 | 20.7 |
| 20 | Charity | Independ. | Black | 6,121 | 19.8 |
| 21 | McGehee | Independ. | White | 1,603 | 5.2 |

TOTAL VOTE 30,928



## 3-D

COUNCILMANIC ELECTION – June 14, 1966

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | Bagley | RF & Crusade | White | 23,997 | 66.2 |
| 2 | Cephas | RF & Crusade | Black | 22,957 | 63.3 |
| 3 | Sheppard | RF | White | 19,763 | 54.5 |
| 4 | Crowe | RF | White | 19,102 | 52.7 |
| 5 | Mundle | RF & Crusade | Black | 18,286 | 50.4 |
| 6 | Marsh (H) | Crusade | Black | 17,812 | 49.1 |
| 7 | Wheat | RF | White | 17,803 | 49.1 |
| 8 | Habenicht | RF | White | 17,066 | 47.1 |
| 9 | Carwile | Crusade | White | 16,356 | 45.1 |
| 10 | Miller | RF | White | 15,862 | 43.8 |
| 11 | Marsh (R) | RF | White | 15,388 | 42.5 |
| 12 | Throckmorton | Independ. | White | 14,876 | 41.0 |
| 13 | Covey | Independ. | White | 13,359 | 36.9 |
| 14 | House | Crusade | White | 13,269 | 36.6 |
| 15 | Holt | Independ. | White | 7,916 | 21.8 |
| 16 | Bradley | Independ. | White | 7,663 | 21.1 |

TOTAL VOTE 36,248 (100%)

## 3-E

### COUNCILMANIC ELECTION – June 14, 1966

Split Precincts – Precincts 17, 23, 25, 45, 54, 56, 58 and 68

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | Cephas | RF & Crusade | Black | 3,057 | 66.4 |
| 2 | Bagley | RF & Crusade | White | 3,041 | 66.0 |
| 3 | H.L. Marsh | Crusade | Black | 2,808 | 61.1 |
| 4 | Carwile | Crusade | White | 2,760 | 59.9 |
| 5 | Mundle | RF & Crusade | Black | 2,493 | 54.1 |
| 6 | Sheppard | RF | White | 2,203 | 47.8 |
| 7 | Crowe | RF | White | 2,130 | 46.3 |
| 8 | House | Crusade | White | 2,078 | 45.2 |
| 9 | Covey | Independ. | White | 2,075 | 45.1 |
| 10 | Throckmorton | Independ. | White | 2,016 | 43.8 |
| 11 | Wheat | RF | White | 1,848 | 40.1 |
| 12 | Habenicht | RF | White | 1,776 | 38.6 |
| 13 | Miller | RF | White | 1,622 | 36.3 |
| 14 | R.T. Marsh | RF | White | 1,578 | 34.3 |
| 15 | Bradley | Independ. | White | 1,175 | 25.5 |
| 16 | Holt | Independ. | White | 1,145 | 24.9 |

TOTAL VOTE 4,604



## 3-F

### COUNCILMANIC ELECTION – June 14, 1966

Black Precincts Exclusive of Split Precincts*

Precincts 1, 3, 4, 5, 6, 7, 8, 9, 18, 19, 24, 46, 47, 55, 62, 63, 64, 65, 66, and 67

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | H.L. Marsh | Crusade | Black | 11,270 | 83.4 |
| 2 | Cephas | RF & Crusade | Black | 10,432 | 77.2 |
| 3 | Mundle | RF & Crusade | Black | 9,329 | 69.0 |
| 4 | Carwile | Crusade | White | 8,454 | 62.5 |
| 5 | Bagley | RF & Crusade | White | 7,316 | 54.1 |
| 6 | Sheppard | RF | White | 5,691 | 42.1 |
| 7 | House | Crusade | White | 4,589 | 33.9 |
| 8 | Covey | Independ. | White | 4,545 | 33.6 |
| 9 | Crowe | RF | White | 4,485 | 33.2 |
| 10 | Wheat | RF | White | 3,581 | 26.4 |
| 11 | Habenicht | RF | White | 3,088 | 22.8 |
| 12 | Miller | RF | White | 3,003 | 22.2 |
| 13 | R.T. Marsh | RF | White | 2,929 | 21.7 |
| 14 | Throckmorton | Independ. | White | 2,467 | 18.3 |
| 15 | Bradley | Independ. | White | 1,426 | 10.4 |
| 16 | Holt | Independ. | White | 1,170 | 8.6 |

TOTAL VOTE 13,515 (100%)

*Does not include split precincts 17, 23, 25, 45, 54, 56, 57, 58 and 68

## 3-G

COUNCILMANIC ELECTION – June 10, 1968

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | Carwile | Crusade | White | 25,361 | 56.6 |
| 2 | Bagley | RF | White | 24,604 | 54.9 |
| 3 | Bliley | RF | White | 23,552 | 52.6 |
| 4 | Crowe | RF | White | 22,631 | 50.5 |
| 5 | Carpenter | Crusade | White | 22,091 | 49.3 |
| 6 | Marsh (H) | Crusade | Black | 22,014 | 49.2 |
| 7 | Forb | RF | White | 21,960 | 49.0 |
| 8 | Wheat | RF | White | 21,437 | 47.9 |
| 9 | Pusey | RF | White | 20,556 | 45.9 |
| 10 | Cephas | RF | Black | 19,675 | 43.9 |
| 11 | Mundle | RF | Black | 18,845 | 42.1 |
| 12 | Randolph, B. | Independ. | White | 18,749 | 41.9 |
| 13 | Kenney | Crusade | Black | 16,372 | 36.6 |
| 14 | Randolph, M. | Crusade | Black | 15,282 | 34.1 |
| 15 | Edwards | Independ. | White | 6,190 | 13.8 |
| 16 | Bradley * | | Black | 4,448 | 9.9 |

TOTAL VOTE 44,787 (100%)

*withdrew prior to election



## 3-H

COUNCILMANIC ELECTION – June 10, 1968

Split Precincts

Precincts – 3, 8, 11, 12, 17, 23, 25, 29, 34, 45, 52, 54, 56, 57, 58, 68

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | Carwile | Crusade | White | 6,203 | 66.0 |
| 2 | Carpenter | Independ. | White | 5,411 | 57.5 |
| 3 | Marsh | Crusade | Black | 5,208 | 55.4 |
| 4 | Bagley | RF | White | 4,485 | 47.7 |
| 5 | Bliley | RF | White | 4,334 | 46.0 |
| 6 | Kenney | Crusade | Black | 4,069 | 43.3 |
| 7 | Crowe | RF | White | 3,985 | 42.2 |
| 8 | Forb | RF | White | 3,820 | 40.6 |
| 9 | Randolph, M. | Crusade | Black | 3,753 | 39.9 |
| 10 | Wheat | RF | White | 3,642 | 38.7 |
| 11 | Pusey | RF | White | 3,610 | 38.4 |
| 12 | Randolph, B. | Independ. | White | 3,561 | 37.9 |
| 13 | Cephas | RF | Black | 3,476 | 37.0 |
| 14 | Mundle | RF | Black | 3,285 | 34.9 |
| 15 | Edwards | Independ. | White | 1,583 | 16.8 |
| 16 | Bradley | Independ. | White | 1,122 | 11.9 |

TOTAL VOTE 9,402

## 3-I

### COUNCILMANIC ELECTION – June 10, 1968

Black Precincts Exclusive of Split Precincts*

Precincts 1, 4, 5, 6, 7, 9, 18, 19, 24, 46, 47, 55, 62, 63, 64, 65, 66 and 67

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | Marsh | Crusade | Black | 13,363 | 91.0 |
| 2 | Carwile | Crusade | White | 13,061 | 88.9 |
| 3 | Carpenter | Independ. | White | 12,010 | 85.0 |
| 4 | Kenney | Crusade | Black | 10,759 | 73.3 |
| 5 | Randolph, M. | Crusade | Black | 9,660 | 65.8 |
| 6 | Cephas | RF | Black | 3,433 | 23.4 |
| 7 | Mundle | RF | Black | 2,922 | 19.9 |
| 8 | Bagley | RF | White | 2,388 | 16.3 |
| 9 | Crowe | RF | White | 2,284 | 15.5 |
| 10 | Bliley | RF | White | 1,877 | 12.8 |
| 11 | Bradley | Independ. | Black | 1,680 | 11.4 |
| 12 | Forb | RF | White | 1,669 | 11.4 |
| 13 | Wheat | RF | White | 1,595 | 10.9 |
| 14 | Pusey | RF | White | 1,574 | 10.7 |
| 15 | Randolph, B. | Independ. | White | 1,546 | 10.5 |
| 16 | Edwards | Independ. | White | 529 | 3.6 |

TOTAL VOTE 14,666 (100%)



## 3-J

### COUNCILMANIC ELECTION – June 10, 1970

New City Results

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | Carwile | Crusade | White | 29,031 | 56.3 |
| 2 | Marsh | Crusade | Black | 26,012 | 50.5 |
| 3 | Carpenter | Crusade | White | 25,502 | 49.5 |
| 4 | Bliley | RF | White | 24,928 | 48.3 |
| 5 | Forb | RF | White | 21,781 | 42.3 |
| 6 | Daniel | RF | White | 21,429 | 41.6 |
| 7 | Valentine | RF | White | 20,977 | 40.8 |
| 8 | Rennie | RF | White | 19,767 | 38.4 |
| 9 | Thompson | RF | White | 19,431 | 37.7 |
| 10 | Orndorff | RF | White | 19,338 | 37.5 |
| 11 | Morris | RF | White | 19,238 | 37.4 |
| 12 | Kenney | Crusade | Black | 17,592 | 34.2 |
| 13 | Lewis | Independ. | White | 16,409 | 31.9 |
| 14 | Shiro | Crusade | White | 16,140 | 31.3 |
| 15 | Taylor | Independ. | White | 15,408 | 29.9 |
| 16 | Livingston | Crusade | White | 13,41! | 26.1 |
| 17 | Holt | Crusade | Black | 13,009 | 25.3 |
| 18 | McCullen | Crusade | White | 12,762 | 24.8 |
| 19 | J.R. Johnson | Independ. | White | 11,307 | 22.0 |
| 20 | Leake | Crusade | White | 9,586 | 18.5 |
| 21 | Royall | Independ. | White | 5,560 | 10.6 |
| 22 | Hodges | Independ. | White | 4,945 | 9.6 |
| 23 | L. Johnson | Independ. | Black | 3,067 | 6.0 |
| 24 | Weber | Independ. | White | 2,139 | 4.2 |
| 25 | Collins | Independ. | White | 1,847 | 3.6 |
| 26 | Hall | Independ. | White | 1,586 | 3.1 |
| 27 | Habough | Independ. | White | 1,278 | 2.5 |
| 28 | Scordo | Independ. | White | 962 | 1.9 |

TOTAL VOTE 51,509 (100%)

## 3-K

COUNCILMANIC ELECTION – June 10, 1970

**Old City Results**

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | Carwile | Crusade | White | 24,132 | 57.1 |
| 2 | Marsh | Crusade | Black | 22,738 | 54.0 |
| 3 | Carpenter | Crusade | White | 21,712 | 51.4 |
| 4 | Bliley | TOP | White | 20,084 | 47.5 |
| 5 | Forb | TOP | White | 17,597 | 41.7 |
| 6 | Daniel | TOP | White | 17,158 | 40.6 |
| 7 | Valentine | TOP | White | 16,855 | 39.9 |
| 8 | Kenney | Crusade | Black | 16,261 | 38.5 |
| 9 | Rennie | TOP | White | 16,128 | 38.2 |
| 10 | Morris | TOP | White | 15,310 | 36.3 |
| 11 | Thompson | TOP | White | 14,694 | 35.0 |
| 12 | Orndorf | TOP | White | 14,531 | 34.4 |
| 13 | Lewis | Crusade | White | 14,456 | 34.2 |
| 14 | Shiro | Independ. | White | 12,543 | 29.7 |
| 15 | Holt | Crusade | Black | 12,400 | 29.4 |
| 16 | Taylor | Independ. | White | 11,136 | 26.9 |
| 17 | McCullen | Crusade | White | 10,817 | 25.7 |
| 18 | Livingston | Crusade | White | 10,705 | 25.4 |
| 19 | J. Johnson | Independ. | White | 7,967 | 18.9 |
| 20 | Leake | Independ. | White | 7,039 | 16.6 |
| 21 | Hodges | Independ. | White | 3,404 | 8.1 |
| 22 | L. Johnson | Independ. | Black | 2,828 | 6.5 |
| 23 | Royall | Independ. | White | 2,807 | 6.4 |
| 24 | Collins | Independ. | White | 1,376 | 3.3 |
| 25 | Weber | Independ. | White | 1,170 | 2.8 |
| 26 | Hall | Independ. | White | 1,051 | 2.5 |
| 27 | Haboush | Independ. | White | 960 | 2.3 |
| 28 | Scordo | Independ. | White | 736 | 1.7 |

TOTAL VOTE 42,248



## 3-L

COUNCILMANIC ELECTION – June 10, 1970

Split Precincts
(Old City)

Precincts – 3, 7, 8, 12, 17, 60, 61, 68

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | Carwile | Crusade | White | 2,278 | 62.9 |
| 2 | Marsh | Crusade | Black | 2,083 | 57.6 |
| 3 | Carpenter | Crusade | White | 2,041 | 56.4 |
| 4 | Kenney | Crusade | Black | 1,594 | 44.1 |
| 5 | Shiro | Independ. | White | 1,376 | 38.0 |
| 6 | Lewis | Crusade | White | 1,293 | 35.7 |
| 7 | Holt | Crusade | Black | 1,242 | 34.3 |
| 8 | Taylor | Independ. | White | 1,242 | 34.3 |
| 9 | McCullen | Crusade | White | 1,130 | 31.2 |
| 10 | Bliley | TOP | White | 1,104 | 30.5 |
| 11 | Livingston | Crusade | White | 1,100 | 30.4 |
| 12 | Forb | TOP | White | 1,084 | 30.0 |
| 13 | J. Johnson | Independ. | White | 1,075 | 29.7 |
| 14 | Daniel | TOP | White | 1,053 | 29.1 |
| 15 | Leake | Independ. | White | 944 | 26.1 |
| 16 | Rennie | TOP | White | 856 | 23.7 |
| 17 | Morris | TOP | White | 782 | 21.6 |
| 18 | Valentine | TOP | White | 770 | 21.3 |
| 19 | Orndorf | TOP | White | 729 | 20.1 |
| 20 | Thompson | TOP | White | 646 | 17.9 |
| 21 | Royall | Independ. | White | 549 | 15.2 |
| 22 | Hodges | Independ. | White | 420 | 11.6 |
| 23 | Collins | Independ. | White | 281 | 7.8 |
| 24 | L. Johnson | Independ. | Black | 252 | 7.0 |
| 25 | Hall | Independ. | White | 158 | 4.4 |
| 26 | Haboush | Independ. | White | 152 | 4.2 |
| 27 | Weber | Independ. | White | 150 | 4.2 |
| 28 | Scordo | Independ. | White | 106 | 2.9 |

TOTAL VOTE 3,615 (100%)

## 3-M

### COUNCILMANIC ELECTION – June 10, 1970

Black Precincts Exclusive of Split Precincts
(Old City)

Precincts – 1, 4, 5, 6, 18, 19, 23, 24, 45, 46, 47, 54, 55, 56, 57, 58, 59, 62, 63, 64, 65, 66, 67

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | Marsh | Crusade | Black | 14,032 | 84.3 |
| 2 | Carwile | Crusade | White | 13,826 | 83.1 |
| 3 | Kenney | Crusade | Black | 11,789 | 70.7 |
| 4 | Carpenter | Crusade | White | 11,643 | 69.9 |
| 5 | Holt | Crusade | Black | 9,492 | 56.9 |
| 6 | Lewis | Crusade | White | 8,253 | 49.5 |
| 7 | Shiro | Independ. | White | 7,997 | 48.0 |
| 8 | McCullen | Crusade | White | 7,678 | 46.1 |
| 9 | Livingston | Crusade | White | 7,445 | 44.6 |
| 10 | Bliley | TOP | White | 2,541 | 15.3 |
| 11 | Taylor | Independ. | White | 2,459 | 14.8 |
| 12 | Leake | Independ. | White | 2,444 | 14.6 |
| 13 | L. Johnson | Independ. | Black | 1,915 | 11.5 |
| 14 | Daniel | TOP | White | 1,874 | 11.2 |
| 15 | Forb | TOP | White | 1,588 | 9.5 |
| 16 | J. Johnson | Independ. | White | 1,107 | 6.6 |
| 17 | Rennie | TOP | White | 1,056 | 6.3 |
| 18 | Valentine | TOP | White | 998 | 6.0 |
| 19 | Morris | TOP | White | 909 | 5.5 |
| 20 | Thompson | TOP | White | 749 | 4.5 |
| 21 | Orndorf | TOP | White | 682 | 4.1 |
| 22 | Hodges | Independ. | White | 386 | 2.3 |
| 23 | Royall | Independ. | White | 325 | 2.0 |
| 24 | Scordo | Independ. | White | 302 | 1.8 |
| 25 | Collins | Independ. | White | 290 | 1.7 |
| 26 | Hall | Independ. | White | 198 | 1.2 |
| 27 | Haboush | Independ. | White | 187 | 1.1 |
| 28 | Weber | Independ. | White | 136 | 0.8 |

TOTAL VOTE 15,940 (100%)



## 3-N

### COUNCILMANIC ELECTION – June 10, 1970

White Precincts Exclusive of Split Precincts
(Old City)

Precincts – 2, 9, 10, 11, 13, 14, 15, 16, 20, 21, 22, 25-44, 48-53

| Rank | Candidate | Endorsement | Race | Vote | % |
|---|---|---|---|---|---|
| 1 | Bliley | TOP | White | 16,439 | 72.4 |
| 2 | Valentine | TOP | White | 16,087 | 66.5 |
| 3 | Forb | TOP | White | 14,925 | 65.8 |
| 4 | Daniel | TOP | White | 14,231 | 62.7 |
| 5 | Rennie | TOP | White | 14,216 | 62.7 |
| 6 | Morris | TOP | White | 13,619 | 60.0 |
| 7 | Thompson | TOP | White | 13,299 | 58.6 |
| 8 | Orndorf | TOP | White | 13,120 | 57.9 |
| 9 | Carpenter | Crusade | White | 8,028 | 35.4 |
| 10 | Carwile | Crusade | White | 8,028 | 35.4 |
| 11 | Taylor | Independ. | White | 7,435 | 32.7 |
| 12 | Marsh | Crusade | Black | 6,623 | 29.2 |
| 13 | J. Johnson | Independ. | White | 5,785 | 25.5 |
| 14 | Lewis | Crusade | White | 4,910 | 21.6 |
| 15 | Leake | Independ. | White | 3,651 | 16.1 |
| 16 | Shiro | Independ. | White | 3,170 | 14.0 |
| 17 | Kenney | Crusade | Black | 2,878 | 12.7 |
| 18 | Hodges | Independ. | White | 2,598 | 11.4 |
| 19 | Livingston | Crusade | White | 2,160 | 9.5 |
| 20 | McCullen | Crusade | White | 2,009 | 8.9 |
| 21 | Royall | Independ. | White | 1,933 | 8.5 |
| 22 | Holt | Crusade | Black | 1,666 | 7.3 |
| 23 | Weber | Independ. | White | 884 | 3.9 |
| 24 | Collins | Independ. | White | 805 | 3.6 |
| 25 | Hall | Independ. | White | 695 | 3.1 |
| 26 | L. Johnson | Independ. | Black | 661 | 2.9 |
| 27 | Haboush | Independ. | White | 621 | 2.7 |
| 28 | Scordo | Independ. | White | 328 | 1.4 |

TOTAL VOTE 22,693 (100%)

## Plaintiff's Exhibit 4 – Merger Vote, Richmond-Henrico, December 13, 1961.

MERGER OF HENRICO AND RICHMOND

Vote – December 13, 1961

Black Precincts – 100% vote No
Mixed Precincts – 62% vote No
White Precincts – 95.7% vote Yes

| Precinct | For | Against | Character | Results |
|---|---|---|---|---|
| 1 | 22 | 130 | Black | No |
| 2 | 202 | 42 | White | Yes |
| 3 | 56 | 80 | Mixed | No |
| 4 | 22 | 151 | Black | No |
| 5 | 26 | 121 | Black | No |
| 6 | 47 | 71 | Mixed | No |
| 7 | 45 | 178 | Mixed | No |
| 8 | 90 | 92 | White | No/Yes |
| 9 | 52 | 95 | White | No |
| 10 | 108 | 28 | White | Yes |
| 11 | 151 | 48 | White | Yes |
| 12 | 201 | 38 | White | Yes |
| 13 | 253 | 43 | White | Yes |
| 14 | 338 | 44 | White | Yes |
| 15 | 434 | 44 | White | Yes |
| 16 | 247 | 97 | White | Yes |
| 17 | 88 | 32 | White | Yes |
| 18 | 47 | 327 | Black | No |
| 19 | 51 | 168 | Black | No |
| 20 | 382 | 19 | White | Yes |
| 21 | 276 | 25 | White | Yes |
| 22 | 255 | 42 | White | Yes |
| 23 | 102 | 81 | White | Yes |
| 24 | 77 | 331 | Black | No |
| 25 | 312 | 238 | Mixed | Yes |
| 26 | 155 | 31 | White | Yes |
| 27 | 185 | 28 | White | Yes |



| Precinct | For | Against | Character | Results |
|---|---|---|---|---|
| 28 | 227 | 44 | White | Yes |
| 29 | 232 | 44 | White | Yes |
| 30 | 364 | 42 | White | Yes |
| 31 | 383 | 34 | White | Yes |
| 32 | 751 | 25 | White | Yes |
| 33 | 460 | 40 | White | Yes |
| 34 | 455 | 62 | White | Yes |
| 35 | 462 | 28 | White | Yes |
| 36 | 512 | 55 | White | Yes |
| 37 | 347 | 14 | White | Yes |
| 38 | 552 | 68 | White | Yes |
| 39 | 421 | 30 | White | Yes |
| 40 | 231 | 22 | White | Yes |
| 41 | 177 | 33 | White | Yes |
| 42 | 207 | 28 | White | Yes |
| 43 | 185 | 40 | White | Yes |
| 44 | 231 | 23 | White | Yes |
| 45 | 175 | 78 | Mixed | Yes |
| 46 | 48 | 390 | Black | No |
| 47 | 85 | 156 | Black | No |
| 48 | 495 | 64 | White | Yes |
| 49 | 543 | 60 | White | Yes |
| 50 | 338 | 35 | White | Yes |
| 51 | 330 | 43 | White | Yes |
| 52 | 230 | 92 | Mixed | Yes |
| 53 | 392 | 28 | White | Yes |
| 54 | 137 | 179 | Mixed | No |
| 55 | 51 | 363 | Mixed | No |
| 56 | 343 | 34 | White | Yes |
| 57 | 215 | 111 | White | Yes |
| 58 | 211 | 67 | White | Yes |
| 59 | 210 | 41 | White | Yes |
| 60 | 193 | 53 | White | Yes |
| 61 | 174 | 35 | White | Yes |
| 62 | 34 | 276 | Black | No |
| 63 | 19 | 98 | Black | No |
| 64 | 44 | 310 | Black | No |
| 65 | 15 | 210 | Black | No |
| 66 | 34 | 201 | Black | No |
| 67 | 34 | 313 | Black | No |
| 68 | 281 | 205 | Mixed | No |

## G.1. Plaintiff's Exhibit 5 (a) – Election analysis 1966.

### AN ANALYSIS OF THE VOTING IN THE COUNCILMANIC ELECTION, JUNE 14, 1966

There was a considerable change in the voting pattern in the 1966 councilmanic election as compared with the 1964 election. The 1966 total of 36,248 was an increase of 5,320 votes over the 1964 total of 30,928. This was an increase of approximately 17 per cent.

The increase in the Negro vote was 5,928, or 60 per cent, from 1962 to 1964. The white vote actually dropped approximately 600 votes, or 3 per cent.

The Negro vote was 43 per cent of the total vote in 1966 as compared with only 32 per cent of the total in 1964.

Even with this change in the voting pattern, the Negro community was not able to give any candidate sufficient votes to elect him without support from the white community. However, neither did the white community give any candidate sufficient votes for election without support from the Negro community.

While this 1966 vote was the highest councilmanic vote on record, it did not compare with the 1964 presidential election when 63,964 votes were cast. It is estimated that this total represented approximately 37,400 white votes and 25,500 Negro votes. Even this total is less than 50 per cent of the adult population of the city.

#### Richmond Forward Strength

In the Fan District most RF candidates obtained a larger percentage of the vote than in 1964, but Throck-



morton ran ahead of Mundle. In the Far West End Richmond Forward candidates increased their majority substantially over the 1964 majority, but here again Throckmorton ran ahead of Mundle.

The RF candidates did better in 1966 on the Southside and in the Ginter Park-Barton Heights area. The RF candidates took eight of the top 9 spots in the Ginter Park area and 7 of the top 9 spots in the Southside precincts.

RF candidates did better in the Mid-West End precincts and Highland Park in 1966 than they did in 1964, but these are still unfavorable precincts.

#### Negro Precincts

It is estimated that the Crusade for Voters endorsement was worth approximately 4,000 votes. This was the difference between the vote given House and Holt in the Negro precincts. Crusade support for Carwile increased his percentage of the Negro vote from 49 per cent in 1964 to 63 per cent in 1966.

Bagley received 8,534 Negro votes with both Crusade and Labor support as compared with Sheppard who received 6,637 without this support. The Richmond Forward organization in the Negro community produced from 3,400 to 6,600 votes for RF candidates who did not receive Crusade support. The weakest RF candidate in the Negro community received 22 per cent of the vote in 1966 as compared with 14 per cent for the weakest RF candidate in 1964.

## Number of Candidates Per Ballot

The average number of candidates voted for per ballot in the white community was 8.0 candidates in 1966 as compared with 8.3 candidates in 1964.

In the Negro community the number of candidates per ballot dropped to 6.0 in 1966 from 6.3 in 1964.

### Bagley

Bagley led the ticket in all white areas of the city except Highland Park. He received 64 per cent of his vote from the white community and 36 per cent from the Negro community. He had the support of RF, labor and the Crusade. Bagley increased his percentage of the total vote from 43 per cent in 1964 to 66 per cent in 1966.

### Cephas

With the support of all organizations except the Taxpayers Association, Cephas received 10,783 votes from the white community and 12,174 votes from the Negro community, 47 percent of his support came from the white community. He increased his percentage of the total vote from 53 per cent in 1964 to 63 per cent in 1966. He ran very strong in the favorable RF areas with 60 per cent of the vote in the Fan District and 59 per cent of the vote in the Far West End.

### Sheppard

Sheppard's percentage of the total vote declined from 58 per cent in 1964 to 55 per cent in 1966. She received



6,637 votes from the Negro community without the support of the Crusade. This accounted for one-third of her total vote.

### Crowe

Crowe's support throughout the city increased considerably – from 45 per cent in 1964 to 53 per cent in 1966. He ran well in all areas and received 5,231 votes in the Negro community, which accounted for 27 per cent of his total vote.

### Mundle

Mundle received 7,400 votes from the white community and 10,880 from the Negro community. 41 per cent of his support came from the white community. In the strong RF precincts he received 43 per cent of the total white vote.

### H. L. Marsh

Henry L. Marsh received 4,667 white votes, or 26 per cent of his total vote. He led the ticket in all areas of the Negro community. In the white community he did poorest in the strong RF precincts in the Fan District and the Far West End with 19 and 17 per cent of the total vote respectively.

**Wheat**

Wheat's percentage of the total vote dropped from 52 per cent in 1964 to 49 per cent in 1966. His share of the vote increased in the white community, but dropped in the Negro community. He received only 24 per cent of his total vote from the Negro community.

**Habenicht**

Habenicht received 79 per cent of his vote from the white community and 21 per cent from the Negro community. He received 3,650 votes in the Negro community. He ran very close to Wheat throughout the white community.

**Carwile**

Carwile received 6,457 votes from the white community and 9,859 from the Negro community. 40 per cent of his vote was white and 60 per cent Negro. He ran strong in the unfavorable RF areas. For instance he received 50 per cent of the Highland Park vote. He was supported by the Taxpayers Association, labor and the Crusade. His percentage of the Negro vote increased from 49 per cent in 1964, without Crusade support, to 63 per cent in 1966, with Crusade support.

**Miller**

Miller received 22 per cent of his votes from the Negro community and 78 per cent from the white community.



His total Negro vote was 3,500. He ran stronger in the white community in 1966 than in 1964, but his percentage of the Negro vote dropped to 22 per cent in 1966 from 31 per cent in 1964. Miller's percentage of the total vote was 44 per cent in 1966 as compared with 45 per cent in 1964 when he ran fifth.

**R. T. Marsh**

Robert T. Marsh's vote was very close, but slightly behind Miller's vote throughout the community. He received 11,971 votes from the white community and 3,417 from the Negro community.

**Throckmorton**

Throckmorton's percentage of the total vote declined only six-tenths of one percent from 1964 to 1966. He ran eighth in 1964 and twelfth in 1966. The difference was in a drop from 33 per cent of the Negro vote in 1964 to 18 per cent in 1966. He ran stronger in favorable RF precincts in 1966 than he did in 1964.

**Referendum**

The staggered terms issue was defeated in the Negro community, where only 13 per cent of the voters cast ballots in favor of it. This issue received a favorable vote of 58 per cent in the white community.

TABLE 1
Councilmanic Election - June 14, 1966
**Total Vote by Candidates**

| Rank | Candidate | 1966 Vote Total | 1966 Vote (%) | 1964 Vote Total | 1964 Vote (%) |
|---|---|---|---|---|---|
| 1 | Bagley | 23,997 | (66.2%) | 13,333 | (43.2%) |
| 2 | Cephas | 22,957 | (63.3%) | 16,512 | (53.4%) |
| 3 | Sheppard | 19,763 | (54.5%) | 18,042 | (58.4%) |
| 4 | Crowe | 19,102 | (52.7%) | 13,846 | (44.8%) |
| 5 | Mundle | 18,286 | (50.4%) | | |
| 6 | H. L. Marsh | 17,812 | (49.1%) | | |
| 7 | Wheat | 17,803 | (49.1%) | 15,965 | (51.6%) |
| 8 | Habenicht | 17,066 | (47.1%) | 12,780 | (41.3%) |
| 9 | Carwile | 16,356 | (45.1%) | 8,228 | (26.8%) |
| 10 | Miller | 15,862 | (43.8%) | 13,886 | (44.9%) |
| 11 | R. T. Marsh | 15,388 | (42.5%) | | |
| 12 | Throckmorton | 14,876 | (41.0%) | 12,860 | (41.6%) |
| 13 | Covey | 13,359 | (36.9%) | 6,983 | (22.6%) |
| 14 | House | 13,269 | (36.6%) | | |
| 15 | Holt | 7,916 | (21.8%) | | |
| 16 | Bradley | 7,663 | (21.1%) | | |
| Referendum | | | | | |
| | FOR | 13,412 | (37.0%) | | |
| | AGAINST | 21,760 | (60.0%) | | |
| Total Vote | | 36,248 | (100.0%) | 30,928 | (100.0%) |



TABLE 2
Councilmanic Election - June 14, 1966
**Vote in Fan District - Precincts 2, 20, 21, 22, 43 and 44**

| Rank | Candidate | Total Vote | % of Total |
|---|---|---|---|
| 1 | Bagley | 1722 | 77.4% |
| 2 | Crowe | 1682 | 75.6% |
| 3 | Wheat | 1672 | 75.2% |
| 4 | Habenicht | 1592 | 71.6% |
| 5 | Sheppard | 1567 | 70.5% |
| 6 | Miller | 1533 | 68.9% |
| 7 | R. T. Marsh | 1497 | 67.3% |
| 8 | Cephas | 1335 | 60.0% |
| 9 | Throckmorton | 1183 | 53.2% |
| 10 | Mundle | 946 | 42.5% |
| 11 | House | 640 | 28.8% |
| 12 | Covey | 576 | 25.9% |
| 13 | Carwile | 529 | 23.8% |
| 14 | Holt | 520 | 23.4% |
| 15 | Bradley | 504 | 22.6% |
| 16 | H. L. Marsh | 411 | 18.5% |
| Referendum | | | |
| | FOR | 1433 | 64.4% |
| | AGAINST | 757 | 34.0% |
| Total Vote | | 2224 | 100.0% |

TABLE 3
Councilmanic Election - June 14, 1966
**Vote in Mid West End - Precincts 26, 27, 28, 29, 41 and 42**
**(Area Between Boulevard and Belt Line)**

| Rank | Candidate | Total Vote | % of Total |
|---|---|---|---|
| 1 | Bagley | 1275 | 72.2% |
| 2 | Throckmorton | 1237 | 70.1% |
| 3 | Crowe | 1085 | 61.5% |
| 4 | Habenicht | 1045 | 59.2% |
| 5 | Wheat | 1034 | 58.6% |
| 6 | Miller | 931 | 52.8% |
| 7 | Sheppard | 921 | 52.2% |
| 8 | House | 861 | 48.8% |
| 9 | R. T. Marsh | 850 | 48.2% |
| 10 | Cephas | 771 | 43.7% |
| 11 | Covey | 744 | 42.2% |
| 12 | Carwile | 709 | 40.2% |
| 13 | Holt | 701 | 39.7% |
| 14 | Bradley | 667 | 37.8% |
| 15 | Mundle | 459 | 26.0% |
| 16 | H. L. Marsh | 432 | 24.5% |
| Referendum | | | |
| | FOR | 803 | 45.5% |
| | AGAINST | 928 | 52.6% |
| Total Vote | | 1765 | 100.0% |



TABLE 4
Councilmanic Election - June 14, 1966
**Far West End - Precincts 30 through 40**
**(Area West of Belt Line)**

| Rank | Candidate | Total Vote | % of Vote |
|---|---|---|---|
| 1 | Bagley | 5400 | 80.1% |
| 2 | Crowe | 5232 | 77.6% |
| 3 | Wheat | 5130 | 76.1% |
| 4 | Habenicht | 5012 | 74.3% |
| 5 | Sheppard | 5007 | 74.2% |
| 6 | Miller | 4786 | 71.0% |
| 7 | R. T. Marsh | 4589 | 68.0% |
| 8 | Cephas | 3986 | 59.1% |
| 9 | Throckmorton | 3276 | 48.6% |
| 10 | Mundle | 2919 | 43.3% |
| 11 | House | 2089 | 31.0% |
| 12 | Covey | 1906 | 28.3% |
| 13 | Holt | 1487 | 22.0% |
| 14 | Carwile | 1455 | 21.6% |
| 15 | Bradley | 1302 | 19.3% |
| 16 | H. L. Marsh | 1139 | 16.9% |
| Referendum | | | |
| | FOR | 4612 | 68.4% |
| | AGAINST | 2065 | 30.6% |
| Total Vote | | 6745 | 100.0% |

TABLE 5
Councilmanic Election - June 14, 1966
**Northside (Ginter Park and Barton Heights) - Precincts 48 through 53**

| Rank | Candidate | Total Vote | % of Vote |
|---|---|---|---|
| 1 | Bagley | 2506 | 73.7% |
| 2 | Crowe | 2338 | 68.8% |
| 3 | Habenicht | 2318 | 68.2% |
| 4 | Wheat | 2286 | 67.2% |
| 5 | Sheppard | 2276 | 66.9% |
| 6 | Miller | 2065 | 60.7% |
| 7 | R. T. Marsh | 2038 | 59.9% |
| 8 | Throckmorton | 1959 | 57.6% |
| 9 | Cephas | 1784 | 52.5% |
| 10 | Mundle | 1207 | 35.5% |
| 11 | Covey | 1195 | 35.1% |
| 12 | House | 1142 | 33.6% |
| 13 | Holt | 940 | 28.5% |
| 14 | Carwile | 928 | 27.3% |
| 15 | Bradley | 888 | 26.1% |
| 16 | H. L. Marsh | 758 | 22.2% |
| Referendum | | | |
| | FOR | 1895 | 55.7% |
| | AGAINST | 1462 | 43.0% |
| Total Vote | | 3400 | 100.0% |



TABLE 6
Councilmanic Election - June 14, 1966
**Northside (Highland Park) - Precincts 59, 60 and 61**

| Rank | Candidate | Total Vote | % of Vote |
|---|---|---|---|
| 1 | Throckmorton | 666 | 79.2% |
| 2 | Bradley | 575 | 68.3% |
| 3 | Bagley | 540 | 64.2% |
| 4 | House | 475 | 56.5% |
| 5 | Covey | 462 | 54.9% |
| 6 | Holt | 457 | 54.3% |
| 7 | Crowe | 434 | 51.6% |
| 8 | Habenicht | 428 | 50.9% |
| 9 | Carwile | 417 | 49.6% |
| 10 | Wheat | 414 | 49.2% |
| 11 | Sheppard | 379 | 45.1% |
| 12 | Miller | 362 | 43.0% |
| 13 | R. T. Marsh | 356 | 42.3% |
| 14 | Cephas | 243 | 28.9% |
| 15 | H. L. Marsh | 210 | 25.0% |
| 16 | Mundle | 126 | 15.0% |
| Referendum | | | |
| | FOR | 280 | 33.3% |
| | AGAINST | 544 | 64.7% |
| Total Vote | | 841 | 100.0% |

TABLE 7
Councilmanic Election - June 14, 1966
**Southside - Precincts 10 through 16**

| Rank | Candidate | Total Vote | % of Vote |
|---|---|---|---|
| 1 | Bagley | 2197 | 69.6% |
| 2 | Throckmorton | 2072 | 65.7% |
| 3 | Covey | 1856 | 58.9% |
| 4 | Wheat | 1838 | 58.3% |
| 5 | Habenicht | 1789 | 56.7% |
| 6 | Sheppard | 1718 | 54.5% |
| 7 | Crowe | 1716 | 54.4% |
| 8 | Miller | 1560 | 49.5% |
| 9 | R. T. Marsh | 1551 | 49.2% |
| 10 | Holt | 1496 | 47.4% |
| 11 | House | 1395 | 44.2% |
| 12 | Cephas | 1349 | 42.8% |
| 13 | Bradley | 1126 | 35.7% |
| 14 | Carwile | 1104 | 35.0% |
| 15 | Mundle | 807 | 25.6% |
| 16 | H. L. Marsh | 784 | 24.9% |
| Referendum | | | |
| | FOR | 1430 | 45.4% |
| | AGAINST | 1694 | 53.7% |
| Total Vote | | 3154 | 100.0% |



TABLE 8
Councilmanic Election - June 14, 1966
**Negro Precincts Exclusive of Split Precincts***
**Precincts 1, 3, 4, 5, 6, 7, 8, 9, 18, 19, 24, 46, 47, 55, 62, 63, 64, 65, 66, and 67**

| Rank | Candidate | Total Vote* | % of Vote |
|---|---|---|---|
| 1 | H. L. Marsh | 11,270 | 83.4% |
| 2 | Cephas | 10,432 | 77.2% |
| 3 | Mundle | 9,329 | 69.0% |
| 4 | Carwile | 8,454 | 62.5% |
| 5 | Bagley | 7,316 | 54.1% |
| 6 | Sheppard | 5,691 | 42.1% |
| 7 | House | 4,589 | 33.9% |
| 8 | Covey | 4,545 | 33.6% |
| 9 | Crowe | 4,485 | 33.2% |
| 10 | Wheat | 3,581 | 26.4% |
| 11 | Habenicht | 3,088 | 22.8% |
| 12 | Miller | 3,003 | 22.2% |
| 13 | R. T. Marsh | 2,929 | 21.7% |
| 14 | Throckmorton | 2,467 | 18.3% |
| 15 | Bradley | 1,426 | 10.5% |
| 16 | Holt | 1,170 | 8.6% |
| Referendum | | | |
| | FOR | 1,765 | 13.0% |
| | AGAINST | 10,686 | 79.0% |
| Total Vote | | 13,515* | 100.0% |

*Does not include split precincts 17, 23, 25, 45, 54, 56, 57, 58 and 68.

TABLE 9

Councilmanic Election - June 14, 1966

**Estimated White and Negro Vote in Split Precincts**

**Precincts 17, 23, 25, 45, 54, 56, 57, 58, and 68**

| Rank | Candidate | Total Vote | Estimated Negro Vote | Estimated White Vote |
|---|---|---|---|---|
| 1 | Cephas | 3,057 | 1,742 | 1,315 |
| 2 | Bagley | 3,041 | 1,218 | 1,823 |
| 3 | H. L. Marsh | 2,808 | 1,875 | 933 |
| 4 | Carwile | 2,760 | 1,405 | 1,355 |
| 5 | Mundle | 2,493 | 1,551 | 942 |
| 6 | Sheppard | 2,203 | 946 | 1,257 |
| 7 | Crowe | 2,130 | 746 | 1,384 |
| 8 | House | 2,078 | 762 | 1,316 |
| 9 | Covey | 2,075 | 755 | 1,320 |
| 10 | Throckmorton | 2,016 | 411 | 1,605 |
| 11 | Wheat | 1,848 | 593 | 1,255 |
| 12 | Habenicht | 1,776 | 544 | 1,232 |
| 13 | Miller | 1,622 | 499 | 1,123 |
| 14 | R. T. Marsh | 1,578 | 488 | 1,090 |
| 15 | Bradley | 1,175 | 236 | 939 |
| 16 | Holt | 1,145 | 193 | 952 |
| Referendum | | | | |
| | FOR | 1,194 | 292 | 902 |
| | AGAINST | 3,292 | 1,776 | 1,516 |
| Total Vote | | 4,604 | 2,248 | 2,356 |



TABLE 10

Councilmanic Election - June 14, 1966

**Analysis of Vote by Candidates**

| | Bagley | | Cephas | | Sheppard | |
|---|---|---|---|---|---|---|
| White Precincts | | | | | | |
| West End | | | | | | |
| Fan District | 1722 | (7.1%) | 1335 | (5.8%) | 1567 | (7.9%) |
| Mid West End | 1275 | (5.3%) | 771 | (3.4%) | 921 | (4.7%) |
| Far West End | 5400 | (22.5%) | 3986 | (17.3%) | 5007 | (25.3%) |
| Northside | | | | | | |
| Ginter Park-Barton Heights | 2506 | (10.4%) | 1784 | (7.8%) | 2276 | (11.5%) |
| Highland Park | 540 | (2.3%) | 243 | (1.1%) | 379 | (1.9%) |
| Southside | 2917 | (9.2%) | 1349 | (5.9%) | 1718 | (8.7%) |
| Split (9) Estimated | 1823 | (7.6%) | 1315 | (5.7%) | 1257 | (6.4%) |
| Total White | 15,463 | (64.4%) | 10,783 | (47.0%) | 13,125 | (66.4%) |
| Negro Precincts | | | | | | |
| Central (4) | 930 | | 1271 | | 699 | |
| South (4) | 923 | | 1107 | | 691 | |
| West (3) | 1557 | | 2110 | | 1143 | |
| North (3) | 1069 | | 1928 | | 1233 | |
| East (6) | 2837 | | 4016 | | 1925 | |
| Split (9) | 1218 | | 1742 | | 946 | |
| Total Negro | 8534 | (35.6%) | 12,174 | (53.0%) | 6637 | (33.6%) |
| Total Vote | 23,997 | (100.0%) | 22,957 | (100.0%) | 19,762 | (100.0%) |

| | Crowe | | Mundle | | H. L. Marsh | |
|---|---|---|---|---|---|---|
| White Precincts | | | | | | |
| West End | | | | | | |
| Fan District | 1682 | (8.8%) | 946 | (5.2%) | 411 | (2.3%) |
| Mid West End | 1085 | (5.7%) | 459 | (2.5%) | 432 | (2.4%) |
| Far West End | 5232 | (27.4%) | 2919 | (16.0%) | 1139 | (6.4%) |
| Northside | | | | | | |
| Ginter Park-Barton Heights | 2338 | (12.2%) | 1207 | (6.6%) | 758 | (4.3%) |
| Highland Park | 434 | (2.3%) | 126 | (0.7%) | 210 | (1.2%) |
| Southside | 1716 | (9.0%) | 807 | (4.4%) | 784 | (4.4%) |
| Split (9) Estimated | 1384 | (7.2%) | 942 | (5.1%) | 933 | (5.2%) |
| Total White | 13,871 | (72.6%) | 7406 | (40.5%) | 4667 | (26.2%) |
| Negro Precincts | | | | | | |
| Central (4) | 542 | | 1063 | | 1312 | |
| South (4) | 550 | | 1002 | | 1157 | |
| West (3) | 903 | | 1850 | | 2257 | |
| North (3) | 1007 | | 1841 | | 2054 | |
| East (6) | 1483 | | 3573 | | 4490 | |
| Split (9) | 746 | | 1551 | | 1875 | |
| Total Negro | 5231 | (27.4%) | 10,880 | (59.5%) | 13,145 | (73.8%) |
| Total Vote | 19,102 | (100.0%) | 18,286 | (100.0%) | 17,812 | (100.0%) |



TABLE 10 (continued)
Councilmanic Election - June 14, 1966
**Analysis of Vote by Candidates**

| | Wheat | | Habenicht | | Carwile | |
|---|---|---|---|---|---|---|
| White Precincts | | | | | | |
| West End | | | | | | |
| Fan District | 1672 | (9.4%) | 1592 | (9.3%) | 529 | (3.2%) |
| Mid West End | 1034 | (5.8%) | 1045 | (6.1%) | 709 | (4.3%) |
| Far West End | 5130 | (28.8%) | 5012 | (29.4%) | 1455 | (8.9%) |
| Northside | | | | | | |
| Ginter Park-Barton Heights | 2286 | (12.8%) | 2318 | (13.6%) | 928 | (5.7%) |
| Highland Park | 414 | (2.3%) | 428 | (2.5%) | 417 | (2.5%) |
| Southside | 1838 | (10.3%) | 1789 | (10.5%) | 1104 | (6.8%) |
| Split (9) Estimated | 1255 | (7.1%) | 1232 | (7.2%) | 1355 | (8.3%) |
| Total White | 13,629 | (76.5%) | 13,416 | (78.6%) | 6497 | (39.7%) |
| Negro Precincts | | | | | | |
| Central (4) | 423 | | 359 | | 1114 | |
| South (4) | 450 | | 426 | | 925 | |
| West (3) | 735 | | 621 | | 1668 | |
| North (3) | 789 | | 681 | | 1389 | |
| East (6) | 1184 | | 1019 | | 3358 | |
| Split (9) | 593 | | 544 | | 1405 | |
| Total Negro | 4174 | (23.5%) | 3650 | (21.4%) | 9859 | (60.3%) |
| Total Vote | 17,803 | (100.0%) | 17,066 | (100.0%) | 16,356 | (100.0%) |

| | Miller | | R. T. Marsh | | Throckmorton | |
|---|---|---|---|---|---|---|
| White Precincts | | | | | | |
| West End | | | | | | |
| Fan District | 1533 | (9.6%) | 1497 | (9.7%) | 1183 | (8.0%) |
| Mid West End | 931 | (5.9%) | 850 | (5.5%) | 1237 | (8.3%) |
| Far West End | 4786 | (30.2%) | 4589 | (29.8%) | 3276 | (22.0%) |
| Northside | | | | | | |
| Ginter Park-Barton Heights | 2065 | (13.0%) | 2038 | (13.2%) | 1959 | (13.1%) |
| Highland Park | 362 | (2.3%) | 356 | (2.3%) | 666 | (4.5%) |
| Southside | 1560 | (9.8%) | 1551 | (10.1%) | 2072 | (13.9%) |
| Split (9) Estimated | 1123 | (7.1%) | 1090 | (7.1%) | 1605 | (10.8%) |
| Total White | 12,360 | (77.9%) | 11,971 | (77.8%) | 11,998 | (80.6%) |
| Negro Precincts | | | | | | |
| Central (4) | 385 | | 429 | | 425 | |
| South (4) | 395 | | 406 | | 478 | |
| West (3) | 586 | | 559 | | 466 | |
| North (3) | 593 | | 620 | | 395 | |
| East (6) | 1044 | | 915 | | 703 | |
| Split (9) | 499 | | 488 | | 411 | |
| Total Negro | 3502 | (22.1%) | 3417 | (22.2%) | 2878 | (19.4%) |
| Total Vote | 15,862 | (100.0%) | 15,388 | (100.0%) | 14,876 | (100.0%) |



TABLE 10 (continued)
Councilmanic Election - June 14, 1966
**Analysis of Vote by Candidates**

| | Bradley | |
|---|---|---|
| White Precincts | | |
| West End | | |
| Fan District | 504 | (6.6%) |
| Mid West End | 667 | (8.7%) |
| Far West End | 1302 | (17.0%) |
| Northside | | |
| Ginter Park-Barton Heights | 888 | (11.6%) |
| Highland Park | 575 | (7.5%) |
| Southside | 1126 | (14.7%) |
| Split (9) Estimated | 939 | (12.3%) |
| Total White | 6001 | (78.3%) |
| Negro Precincts | | |
| Central (4) | 228 | |
| South (4) | 294 | |
| West (3) | 284 | |
| North (3) | 190 | |
| East (6) | 430 | |
| Split (9) | 236 | |
| Total Negro | 1662 | (21.7%) |
| Total Vote | 7663 | (100.0%) |

TABLE 10 (continued)
Councilmanic Election - June 14, 1966
**Analysis of Vote by Candidates**

| | Covey | | House | | Holt | |
|---|---|---|---|---|---|---|
| White Precincts | | | | | | |
| West End | | | | | | |
| Fan District | 576 | (4.3%) | 640 | (4.8%) | 520 | (6.6%) |
| Mid West End | 744 | (5.6%) | 861 | (6.5%) | 701 | (8.9%) |
| Far West End | 1906 | (14.3%) | 2089 | (15.7%) | 1487 | (18.8%) |
| Northside | | | | | | |
| Ginter Park-Barton Heights | 1195 | (8.9%) | 1142 | (8.6%) | 940 | (11.9%) |
| Highland Park | 462 | (3.5%) | 475 | (3.6%) | 457 | (5.8%) |
| Southside | 1856 | (13.9%) | 1395 | (10.5%) | 1496 | (18.9%) |
| Split (9) Estimated | 1320 | (9.9%) | 1316 | (9.9%) | 952 | (12.0%) |
| Total White | 8059 | (60.3%) | 7918 | (59.7%) | 6553 | (82.8%) |
| Negro Precincts | | | | | | |
| Central (4) | 563 | | 623 | | 188 | |
| South (4) | 639 | | 645 | | 289 | |
| West (3) | 961 | | 939 | | 228 | |
| North (3) | 705 | | 701 | | 138 | |
| East (6) | 1677 | | 1681 | | 327 | |
| Split (9) | 755 | | 762 | | 193 | |
| Total Negro | 5300 | (39.7%) | 5351 | (40.3%) | 1363 | (17.2%) |
| Total Vote | 13,359 | (100.0%) | 13,269 | (100.0%) | 7916 | (100.0%) |



TABLE 11
**Comparison of Voting by Sections of City**
**(Adjusted for Split Precincts)**

| | | |
|---|---|---|
| White Precincts | | |
| West End | | |
| Fan District | 2,224 | |
| Mid West End | 1,765 | |
| Far West End | 6,745 | |
| Northside | | |
| Ginter Park-Barton Heights | 3,400 | |
| Highland Park | 841 | |
| Southside | 3,154 | |
| Split Precincts | 2,356 | |
| Est. Total White Vote | 20,485 | 56.5% |
| Negro Precincts | | |
| Central | 1,655 | |
| South | 1,590 | |
| West | 2,656 | |
| North | 2,356 | |
| East | 5,258 | |
| Split | 2,248 | |
| Est. Total Negro Vote | 15,763 | 43.5% |
| Total Vote | 36,248 | 100.0% |

TABLE 12
**Comparison of Voting by Precincts 1964 and 1966**

| Precinct | 1964 Councilmanic Vote | 1964 Presidential Vote | 1966 Councilmanic Vote |
|---|---|---|---|
| West End | | | |
| Fan District | | | |
| 2 | 309 | 607 | 282 |
| 20 | 499 | 849 | 487 |
| 21 | 414 | 659 | 414 |
| 22 | 368 | 760 | 387 |
| 43 | 309 | 648 | 319 |
| 44 | 344 | 647 | 335 |
| Total | 2243 | 4170 | 2224 |
| Mid West End | | | |
| 26 | 242 | 454 | 242 |
| 27 | 271 | 539 | 252 |
| 28 | 355 | 644 | 340 |
| 29 | 385 | 747 | 363 |
| 41 | 263 | 560 | 258 |
| 42 | 330 | 639 | 310 |
| Total | 1846 | 3583 | 1765 |
| Far West End | | | |
| 30 | 594 | 1150 | 580 |
| 31 | 528 | 850 | 488 |
| 32 | 921 | 1244 | 942 |
| 33 | 608 | 988 | 647 |
| 34 | 667 | 1136 | 646 |
| 35 | 582 | 863 | 599 |
| 36 | 692 | 1285 | 706 |
| 37 | 467 | 677 | 441 |
| 38 | 739 | 1350 | 787 |
| 39 | 568 | 939 | 535 |
| 40 | 340 | 732 | 374 |
| Total | 6706 | 11,214 | 6745 |



| Precinct | 1964 Councilmanic Vote | 1964 Presidential Vote | 1966 Councilmanic Vote |
|---|---|---|---|
| Northside | | | |
| Ginter Park-Barton Heights | | | |
| 48 | 742 | 1266 | 720 |
| 49 | 752 | 1214 | 745 |
| 50 | 463 | 765 | 449 |
| 51 | 456 | 827 | 456 |
| 52 | 427 | 911 | 531 |
| 53 | 520 | 931 | 499 |
| Total | 3360 | 5914 | 3400 |
| Highland Park | | | |
| 59 | 311 | 592 | 287 |
| 60 | 309 | 583 | 297 |
| 61 | 267 | 531 | 257 |
| Total | 887 | 1706 | 841 |
| Southside | | | |
| 10 | 223 | 461 | 231 |
| 11 | 340 | 635 | 326 |
| 12 | 391 | 784 | 351 |
| 13 | 450 | 770 | 446 |
| 14 | 562 | 1258 | 587 |
| 15 | 664 | 1166 | 704 |
| 16 | 467 | 1643 | 509 |
| Total | 3097 | 6717 | 3154 |
| Total White Precincts | 18,139 | 33,304 | 18,129 |

TABLE 12 (continued)

| Precinct | 1964 Councilmanic Vote | 1964 Presidential Vote | 1966 Councilmanic Vote |
|---|---|---|---|
| Split Precincts | | | |
| 17 | 184 | 458 | 226 |
| 23 | 269 | 649 | 338 |
| 25 | 838 | 1505 | 978 |
| 45 | 368 | 853 | 463 |
| 54 | 425 | 655 | 467 |
| 56 | 417 | 775 | 361 |
| 57 | 458 | 834 | 533 |
| 58 | 422 | 833 | 440 |
| 68 | 666 | 1513 | 798 |
| Total Split Precincts | 4047 | 8075 | 4604 |
| Negro Community | | | |
| Central | | | |
| 1 | 305 | 665 | 419 |
| 3 | 238 | 577 | 321 |
| 4 | 360 | 1276 | 686 |
| 5 | 221 | 560 | 229 |
| Total | 1124 | 3078 | 1655 |
| South | | | |
| 6 | 195 | 749 | 360 |
| 7 | 379 | 1007 | 540 |
| 8 | 330 | 870 | 378 |
| 9 | 241 | 545 | 312 |
| Total | 1145 | 3171 | 1590 |
| West | | | |
| 18 | 634 | 1625 | 1082 |
| 19 | 424 | 1059 | 676 |
| 24 | 637 | 1254 | 898 |
| Total | 1695 | 3938 | 2656 |



| Precinct | 1964 Councilmanic Vote | 1964 Presidential Vote | 1966 Councilmanic Vote |
|---|---|---|---|
| North | | | |
| 46 | 766 | 1504 | 1028 |
| 47 | 396 | 688 | 533 |
| 55 | 671 | 1072 | 795 |
| Total | 1833 | 3264 | 2356 |
| East | | | |
| 62 | 683 | 2173 | 1208 |
| 63 | 198 | 866 | 385 |
| 64 | 659 | 1808 | 1174 |
| 65 | 375 | 1357 | 670 |
| 66 | 404 | 1329 | 779 |
| 67 | 626 | 1601 | 1042 |
| Total | 2945 | 9134 | 5258 |
| Total Negro Precincts | 8742 | 22,585 | 13,515 |
| Total Vote | 30,928 | 63,964 | 36,248 |

**Tables**

Detailed tables of this analysis of the 1966 councilmanic vote by areas and by candidates will be found in the attached tables.

**2. Plaintiff's Exhibit 5(b) – Election Analysis 1968**

**COUNCILMANIC ELECTION**
**JUNE 11, 1968**

**AN ANALYSIS OF THE VOTING IN THE COUNCILMANIC ELECTION JUNE 11, 1968**

The most significant factors in the voting pattern in the Councilmanic Election in 1968, as compared with previous Councilmanic elections were the increase in the total vote and the sharp division between the white and the Negro vote.

The 1968 total of 44,880 was an increase of 8,632 over the previous high of 36,248 reached in 1966. The white vote increased 4,574 in 1968 as compared with a decrease of approximately 600 in 1966. The Negro vote increased 4,058 in 1968 as compared with an increase of 5,320 in 1966.

**The General Trend**

The voting pattern continued to edge towards an even balance between the white and the Negro vote. The white vote was 55.8% of the total in 1968 and the Negro vote 44.2% of the total. In 1966 the proportion had been



white 56.5% and Negro 43.5%. This 1966 proportion had been a major shift from the previous election year of 1964 when the white vote was 68.2% and the Negro vote 31.8%.

The total Negro vote of 19,821 appears to have been just about the same as that cast in the November 1967 General Assembly election. For example, in the large east end Negro precinct #64 the vote was slightly higher – 1515 in 1967 and 1644 in 1968, in the large northside Negro precinct #46 the vote was slightly lower – 1128 in 1967 and 1073 in 1968, while in the large west end Negro precinct #18 the vote was the identical 1114 in each election.

**The Richmond Forward Candidates**

There was a sharp division in the candidates supported in the white and Negro precincts. The Richmond Forward candidates were in eight of the first nine places in every white area of the city except Highland Park. In Highland Park Messrs. Mundle and Cephas slipped out of the first nine. Just the opposite occurred in the Negro areas in which the five candidates supported by the Crusade for Voters won the top five places by a substantial margin over the rest of the field.

The individual RF candidates generally increased their support in the white areas by 10% or more over 1966. The white vote for the six winning RF candidates ranged from 74 to 85% and was virtually enough to elect them.

Messrs. Mundle and Cephas received almost 60% of the white vote, an increase of about 7% for Mr. Cephas and about 23% for Mr. Mundle. But these latter two candidates lost large amounts of Negro support received

in 1966, falling from 77.2% to 24% and from 70% to 20.5% of the Negro vote, respectively. Thus they were defeated although they received a larger white vote than ever before.

Similarly the white RF candidates lost a drastic amount of their Negro vote. Mr. Bagley, who had the Crusade endorsement in 1966, slipped from 54.1% to 17.2% of the Negro vote. Mr. Crowe, who had not had the endorsement in 1966, still slipped from 33.2% to 16.1% of the Negro vote; likewise, Mr. Wheat, without the endorsement of the Crusade in 1966, still slipped from 26.5% to 11.1% of the Negro vote.

**Howard Carwile**

Mr. Carwile led the ticket because of the sharp increase in the size of his Negro vote from 62.5% in 1966 to 87.2% in 1968. His white vote increased only from 31.7% to 32.2%. This broke the rule that no white candidate could receive more than 60% of the Negro vote and supported the analysis that the Negro voter was now more concerned about "activism" than color.

**The Impact of National Events**

Several national events and their impact on Richmond may have contributed to the Negro voting pattern this year. At the outset of the campaign, Dr. Martin Luther King was assassinated. A few weeks after this assassination the Poor People's March came through Richmond and was well received. In the week following their departure from Richmond, a sample ticket called the Poor People's Ticket was widely distributed in Negro



areas of Richmond. The obvious suggestion was that persons supporting the Poor People's March and Dr. King should support the Poor People's Ticket.

The five candidates endorsed on the Poor People's Ticket were the candidates subsequently endorsed by the Crusade for Voters. This ticket was apparently well enough received to justify a second distribution of it a few weeks before the election.

Finally, the assassination of Senator Robert Kennedy occurred in the final days of the campaign.

If these events did influence the Negro voter, then it would be a mistake to read the results as evidence of a great increase in the strength of the Crusade for Voters. The fact that Messrs. Crowe and Wheat lost significant Negro support – Mr. Crowe slipping from 33.2% to 16.1% of the Negro vote and Mr. Wheat slipping from 26.5% to 11.1% of the Negro vote – although they were not supported by the Crusade in either campaign, suggests that there were factors other than the Crusade endorsement which affected the Negro voting pattern in this election.

National events, and particularly the unrest occurring throughout the Nation, may have affected the white voter also. The disturbances in Richmond following Dr. King's assassination obviously upset many white voters. Concern over this national and local unrest, and an absence of strong white opposition candidates, probably increased the support given the Richmond Forward candidates in the white areas. Hopefully, this increased support also indicated approval of the Richmond Forward record. The sharp increase in the number of white voters would have been difficult to achieve without such approval.

**"Race" as an Issue**

This analysis of the voting patterns in terms of white and Negro voters suggests that "race" was a much greater issue than it actually appears to have been. The small support given Mr. Edwards by the white voters (21.2%) and Mr. Bradley by the Negro voters (12.1%) suggests that a man's race had little influence on most voters. This is reinforced by the large white vote for Messrs. Cephas and Mundle, and the large Negro vote for Messrs. Carwile and Carpenter.

The white and Negro voter appear to have voted differently because they were concerned about different issues. Recognizing that such conclusions can only be conjecture and over-simplification at best, it is suggested that the white voter was concerned mainly about the stability of society, while the Negro voter was concerned mainly about the problems of the poor. This is not to suggest for a moment that both groups were not concerned about the poor and a stable society, but their priorities appear to have been different. Nor is this to suggest that all candidates were not concerned about the poor and a stable society, but in the voter's mind, they appear to have been identified as candidates for either one or the other goal.

**The Open Housing Referendum**

A not too surprising 25% of the white voters supported the open housing referendum. Combined with the Negro vote, this would have been sufficient to pass this referendum except for the fact that 33% of the Negro voters abstained from voting. These Negro voters who



abstained thought open housing would be defeated and abstained to minimize the effect of such a defeat. It appears certain that they would have voted for open housing if they had voted on the issue, and, in retrospect, that their votes would have been sufficient to pass the referendum. The total vote was 34% voting "For" and 46% voting "Against" and 20% abstaining.

**J. Plaintiff's Exhibit 24 – Report to Aldhizer Commission, with Exhibits, by C. B. Mattox, Jr., City Attorney, February 5, 1969.**
**(This exhibit has not been printed, but has been reproduced separately and filed together with this Appendix.)**

**K. Plaintiff's Exhibit 25 – Booklet entitled "Expand Richmond's Boundaries" – Report to the Richmond Boundary Expansion.**
**(This exhibit has not been printed, but has been reproduced separately and filed together with this Appendix.)**

## ANALYSIS OF VOTING

(The recent Presidential election makes possible an analysis and comparison of the voting in this and the City Council elections since Richmond Forward was founded.)

### VOTES

| | City Council | | Presidential | |
|---|---|---|---|---|
| | **White** | **Negro** | **White** | **Negro** |
| 1964 | 21,093 | 9,835 | 37,339 | 26,625 |
| 1966 | 20,429 | 15,819 | | |
| 1968 | 25,059 | 19,821 | 39,122 | 28,605 |

### PERCENTAGE

| | **White** | **Negro** | **White** | **Negro** |
|---|---|---|---|---|
| 1964 | 68.2 | 31.8 | 58.3 | 41.7 |
| 1966 | 56.4 | 43.6 | | |
| 1968 | 55.8 | 44.2 | 57.8 | 42.2 |

Note:

1. The increase in the white vote in the 1968 City Council election after relative stability in 1966.

2. The increase in the Negro vote in the City Council elections in both 1966 and 1968.

3. The comparatively smaller increase in both the white and Negro vote in the Presidential election in 1968.

4. The similarity of the percentages of white and Negro vote in both City Council and Presidential elections since the poll tax requirement for voting was removed. (Presidential election – 1964; City Council election – 1966).



Estimate of Crusade for Voters strength:

| **1968 City Council** | **% of Negro Vote Received** |
|---|---|
| 1. Marsh | 91.0 |
| 2. Carwile | 88.9 |
| 3. Carpenter | 85.0 |
| 4. Kenney | 73.3 |
| 5. Randolph, M. | 65.8 |

| **1968 Presidential** | **% of Negro Vote Received** |
|---|---|
| Humphrey | 97.9 |
| Nixon | 2.0 |

| **1968 Congressional** | **% of Negro Vote Received** |
|---|---|
| Satterfield | 19.2 |
| Hansen | 80.8 |
| Hansen vote less Republicans (determined by subtracting Nixon vote) | 78.5 |

Comment:

1. The Hansen vote represents mostly voters who switched from a Democratic Presidential vote to a Republican Congressional vote. The only explanation for such a large crossing of party lines to vote for a political unknown appears to be the Crusade endorsement.

2. The top three in the City Council election obviously had personal support in addition to their Crusade support. It looks like Messrs. Kenney and Randolph did not.

3. The Crusade influence appears to increase with the size of the vote and to range from about 65 to 75%.

TABLE 1
Councilmanic Election – June 11, 1968
TOTAL VOTE BY CANDIDATES

| Rank | Candidate | 1968 Vote Total | 1968 Vote (%) | 1966 Vote Total | 1966 Vote (%) | 1964 Vote Total | 1964 Vote (%) |
|---|---|---|---|---|---|---|---|
| 1 | Carwile | 25,361 | (56.6%) | 16,356 | (45.1%) | 8,228 | (26.8%) |
| 2 | Bagley | 24,604 | (54.9%) | 23,997 | (66.2%) | 13,333 | (43.2%) |
| 3 | Bliley | 23,552 | (52.6%) | | | | |
| 4 | Crowe | 22,631 | (50.5%) | 19,102 | (52.7%) | 13,846 | (44.8%) |
| 5 | Carpenter | 22,091 | (49.3%) | | | | |
| 6 | Marsh, H.L. | 22,014 | (49.2%) | 17,812 | (49.1%) | | |
| 7 | Forb | 21,960 | (49.0%) | | | | |
| 8 | Wheat | 21,437 | (47.9%) | 17,803 | (49.1%) | 15,965 | (51.6%) |
| 9 | Pusey | 20,556 | (45.9%) | | | | |
| 10 | Cephas | 19,675 | (43.9%) | 22,957 | (63.3%) | 16,512 | (53.4%) |
| 11 | Mundle | 18,845 | (42.1%) | 18,286 | (50.4%) | | |
| 12 | Randolph, B. | 18,749 | (41.9%) | | | | |
| 13 | Kenney | 16,372 | (36.6%) | | | | |
| 14 | Randolph, M. | 15,282 | (34.1%) | | | | |
| 15 | Edwards | 6,190 | (13.8%) | | | | |
| 16 | Bradley | 4,448 | ( 9.9%) | | | | |
| Total Vote | | 44,787 | (100.0%) | 36,248 | (100.0%) | 30,928 | (100.0%) |
| Increase | | 8,539 | (23.6%) | 5,320 | | | |



TABLE 2
Councilmanic Election – June 11, 1968
Vote in Fan District – Precincts 2, 20, 21, 22, 43 and 44

| Rank | Candidate | 1968 Vote Total | 1968 Vote (%) | 1966 Vote Total | 1966 Vote (%) |
|---|---|---|---|---|---|
| 1 | Bagley | 2,352 | (85.3%) | 1,722 | (77.4%) |
| 2 | Bliley | 2,322 | (84.2%) | | |
| 3 | Crowe | 2,228 | (80.8%) | 1,682 | (75.6%) |
| 4 | Wheat | 2,202 | (79.9%) | 1,672 | (75.2%) |
| 5 | Forb | 2,108 | (76.5%) | | |
| 6 | Pusey | 2,107 | (76.4%) | | |
| 7 | Randolph, B. | 1,820 | (66.0%) | | |
| 8 | Mundle | 1,809 | (65.6%) | 946 | (42.5%) |
| 9 | Cephas | 1,798 | (65.2%) | 1,335 | (60.0%) |
| 10 | Carwile | 771 | (28.0%) | 529 | (23.8%) |
| 11 | Carpenter | 717 | (26.0%) | | |
| 12 | Marsh, H.L. | 475 | (17.2%) | 411 | (18.5%) |
| 13 | Edwards | 474 | (17.2%) | | |
| 14 | Randolph, M. | 276 | (10.0%) | | |
| 15 | Bradley | 257 | ( 9.3%) | | |
| 16 | Kenney | 237 | ( 8.6%) | | |
| Total Vote | | 2,757 | (100.0%) | 2,224 | (100.0%) |
| Increase | | 533 | (24.0%) | | |

TABLE 3
Councilmanic Election – June 11, 1968
Vote in Mid West End – Precincts 26, 27, 28, 29, 41 and 42
(Area Between Boulevard and Belt Line)

| Rank | Candidate | 1968 Vote Total | 1968 Vote (%) | 1966 Vote Total | 1966 Vote (%) |
|---|---|---|---|---|---|
| 1 | Bliley | 1,859 | (86.4%) | | |
| 2 | Bagley | 1,755 | (81.6%) | 1,275 | (72.2%) |
| 3 | Forb | 1,550 | (72.1%) | | |
| 4 | Crowe | 1,548 | (72.0%) | 1,085 | (61.5%) |
| 5 | Wheat | 1,524 | (70.9%) | 1,034 | (58.6%) |
| 6 | Pusey | 1,436 | (66.7%) | | |
| 7 | Randolph, B. | 1,369 | (63.6%) | | |
| 8 | Cephas | 1,132 | (52.6%) | 771 | (43.7%) |
| 9 | Mundle | 1,097 | (51.0%) | 459 | (26.0%) |
| 10 | Carpenter | 880 | (40.9%) | | |
| 11 | Carwile | 843 | (39.2%) | 709 | (40.2%) |
| 12 | Edwards | 547 | (25.4%) | | |
| 13 | Marsh, H.L. | 369 | (17.2%) | 432 | (24.5%) |
| 14 | Bradley | 236 | (11.0%) | | |
| 15 | Randolph, M. | 204 | ( 9.5%) | | |
| 16 | Kenney | 196 | ( 9.1%) | | |
| Total | | 2,151 | (100.0%) | 1,765 | (100.0%) |
| Increase | | 386 | (21.9%) | | |



TABLE 4
Councilmanic Election – June 11, 1968
Far West End – Precincts 30 through 40
(Area West of Belt Line)

| Rank | Candidate | 1968 Vote Total | 1968 Vote (%) | 1966 Vote Total | 1966 Vote (%) |
|---|---|---|---|---|---|
| 1 | Bagley | 7,433 | (85.9%) | 5,400 | (80.1%) |
| 2 | Bliley | 7,244 | (83.7%) | | |
| 3 | Forb | 7,182 | (83.0%) | | |
| 4 | Crowe | 7,042 | (81.4%) | 5,232 | (77.6%) |
| 5 | Wheat | 6,984 | (80.7%) | 5,130 | (76.1%) |
| 6 | Pusey | 6,607 | (76.4%) | | |
| 7 | Cephas | 5,730 | (66.2%) | 3,986 | (59.1%) |
| 8 | Mundle | 5,668 | (65.5%) | 2,919 | (43.3%) |
| 9 | Randolph, B. | 5,611 | (64.9%) | | |
| 10 | Carpenter | 2,126 | (24.6%) | | |
| 11 | Carwile | 1,952 | (22.6%) | 1,455 | (21.6%) |
| 12 | Marsh | 1,226 | (14.2%) | 1,139 | (16.9%) |
| 13 | Edwards | 1,169 | (13.5%) | | |
| 14 | Randolph, M. | 617 | ( 7.1%) | | |
| 15 | Bradley | 479 | ( 5.5%) | | |
| 16 | Kenney | 467 | ( 5.4%) | | |
| Total | | 8,650 | (100.0%) | 6,745 | (100.0%) |
| Increase | | 1,905 | (28.9%) | | |

TABLE 5
Councilmanic Election – June 11, 1968
Northside (Ginter Park and Barton Heights) – Precincts 48 through 53*

| Rank | Candidate | 1968 Vote Total | 1968 Vote (%) | 1966 Vote Total | 1966 Vote (%) |
|---|---|---|---|---|---|
| 1 | Bagley | 3,656 | (81.2%) | 2,506 | (73.7%) |
| 2 | Bliley | 3,609 | (80.2%) | | |
| 3 | Crowe | 3,471 | (77.1%) | 2,338 | (68.8%) |
| 4 | Wheat | 3,392 | (75.4%) | 2,286 | (67.2%) |
| 5 | Forb | 3,331 | (74.0%) | | |
| 6 | Pusey | 3,265 | (72.6%) | | |
| 7 | Randolph, B. | 2,782 | (61.8%) | | |
| 8 | Cephas | 2,747 | (61.0%) | 1,784 | (52.5%) |
| 9 | Mundle | 2,732 | (60.7%) | 1,207 | (35.5%) |
| 10 | Carpenter | 1,595 | (35.4%) | | |
| 11 | Carwile | 1,405 | (31.2%) | 928 | (27.3%) |
| 12 | Marsh | 943 | (21.0%) | 758 | (22.2%) |
| 13 | Edwards | 788 | (17.5%) | | |
| 14 | Randolph, M. | 587 | (13.0%) | | |
| 15 | Kenney | 538 | (12.0%) | | |
| 16 | Bradley | 302 | ( 6.7%) | | |
| Total | | 4,500 | (100.0%) | 3,400 | (100.0%) |
| Increase | | 1,100 | (32.4%) | | |

*52 is split, 12 appears split, 16 appears split slightly



TABLE 6
Councilmanic Election – June 11, 1968
Northside (Highland Park) – Precincts 59, 60 and 61

| Rank | Candidate | 1968 Vote Total | 1968 Vote (%) | 1966 Vote Total | 1966 Vote (%) |
|---|---|---|---|---|---|
| 1 | Bagley | 766 | (75.8%) | 540 | (64.2%) |
| 2 | Bliley | 746 | (73.8%) | | |
| 3 | Forb | 661 | (65.4%) | | |
| 4 | Randolph, B. | 630 | (62.3%) | | |
| 5 | Wheat | 616 | (60.9%) | 414 | (49.2%) |
| 6 | Crowe | 611 | (60.4%) | 434 | (51.6%) |
| 7 | Pusey | 607 | (60.0%) | | |
| 8 | Carwile | 575 | (56.9%) | 417 | (49.6%) |
| 9 | Edwards | 393 | (38.9%) | | |
| 10 | Carpenter | 388 | (38.4%) | | |
| 11 | Cephas | 383 | (37.9%) | 243 | (28.9%) |
| 12 | Mundle | 366 | (36.2%) | 126 | (15.0%) |
| 13 | Marsh | 257 | (25.4%) | 210 | (25.0%) |
| 14 | Randolph, M. | 157 | (15.5%) | | |
| 15 | Kenney | 156 | (15.4%) | | |
| 16 | Bradley | 141 | (13.9%) | | |
| Total | | 1,011 | (100.0%) | 841 | (100.0%) |
| Increase | | 170 | (20.2%) | | |

TABLE 7
Councilmanic Election – June 11, 1968
Southside – Precincts 10 through 16*

| Rank | Candidate | 1968 Vote Total | (%) | 1966 Vote Total | (%) |
|---|---|---|---|---|---|
| 1 | Bagley | 3,618 | (79.6%) | 2,197 | (69.6%) |
| 2 | Bliley | 3,518 | (77.4%) | | |
| 3 | Forb | 3,315 | (73.0%) | | |
| 4 | Crowe | 3,126 | (68.8%) | 1,716 | (54.4%) |
| 5 | Wheat | 3,096 | (68.1%) | 1,838 | (58.3%) |
| 6 | Pusey | 3,023 | (66.5%) | | |
| 7 | Randolph, B. | 2,845 | (62.6%) | | |
| 8 | Mundle | 2,336 | (51.4%) | 807 | (25.6%) |
| 9 | Cephas | 2,021 | (44.5%) | 1,349 | (42.8%) |
| 10 | Carwile | 1,901 | (41.8%) | 1,104 | (35.0%) |
| 11 | Carpenter | 1,752 | (38.6%) | | |
| 12 | Edwards | 1,344 | (29.6%) | | |
| 13 | Marsh | 1,072 | (23.6%) | 784 | (24.9%) |
| 14 | Kenney | 663 | (14.6%) | | |
| 15 | Randolph, M. | 663 | (14.6%) | | |
| 16 | Bradley | 504 | (11.1%) | | |
| Total | | 4,543 | (100.0%) | 3,154 | (100.0%) |
| Increase | | 1,389 | (44.0%) | | |

*12 appears split, 16 appears split slightly



TABLE 8
Councilmanic Election – June 11, 1968
Negro Precincts Exclusive of Split Precincts*
Precincts 1, 3, 4, 5, 6, 7, 8, 9, 18, 19, 24, 46, 47
55, 62, 63, 64, 65, 66 and 67

| Rank | Candidate | 1968 Vote Total | (%) | 1966 Vote Total | (%) |
|---|---|---|---|---|---|
| 1 | Marsh | 13,867 | (89.6%) | 11,270 | (83.4%) |
| 2 | Carwile | 13,657 | (88.2) | 8,454 | (62.5%) |
| 3 | Carpenter | 12,482 | (80.6%) | | |
| 4 | Kenney | 11,141 | (72.0%) | | |
| 5 | Randolph, M. | 10,035 | (64.8%) | | |
| 6 | Cephas | 3,710 | (24.0%) | 10,432 | (77.2%) |
| 7 | Mundle | 3,188 | (20.6%) | 9,329 | (69.0%) |
| 8 | Bagley | 2,736 | (17.7) | 7,316 | (54.1%) |
| 9 | Crowe | 2,596 | (16.8%) | 4,485 | (33.2%) |
| 10 | Bliley | 2,233 | (14.4%) | | |
| 11 | Forb | 1,934 | (12.5%) | | |
| 12 | Wheat | 1,854 | (12.0%) | 3,581 | (26.4%) |
| 13 | Pusey | 1,849 | (11.9%) | | |
| 14 | Randolph, B. | 1,821 | (11.8%) | | |
| 15 | Bradley | 1,788 | (11.5%) | | |
| 16 | Edwards | 660 | ( 4.3%) | | |
| Total | | 15,483 | (100.0%) | 13,515* | (100.0%) |
| Increase | | 1,968 | (14.6%) | | |

*Does not include split precincts 17, 23, 25, 45, 54, 56, 57, 58 and 68.

TABLE 8 (Revised)
Councilmanic Election – June 11, 1968
Negro Precincts Exclusive of Split Precincts*
Precincts 1, 4, 5, 6, 7, 9, 18, 19, 24, 46, 47, 55, 62, 63, 64, 65, 66 and 67

| Rank | Candidate | 1968 Vote Total | 1968 Vote (%) | 1966 Vote Total | 1966 Vote (%) |
|---|---|---|---|---|---|
| 1 | Marsh | 13,363 | (91.0) | 11,270 | (83.4) |
| 2 | Carwile | 13,061 | (88.9) | 8,454 | (62.5) |
| 3 | Carpenter | 12,010 | (85.0) | | |
| 4 | Kenney | 10,759 | (73.3) | | |
| 5 | Randolph, M. | 9,660 | (65.8) | | |
| 6 | Cephas | 3,433 | (23.4) | 10,432 | (77.2) |
| 7 | Mundle | 2,922 | (19.9) | 9,329 | (69.0) |
| 8 | Bagley | 2,388 | (16.3) | 7,316 | (54.1) |
| 9 | Crowe | 2,284 | (15.5) | 4,485 | (33.2) |
| 10 | Bliley | 1,877 | (12.8) | | |
| 11 | Bradley | 1,680 | (11.4) | | |
| 12 | Forb | 1,669 | (11.4) | | |
| 13 | Wheat | 1,595 | (10.9) | 3,581 | (26.4) |
| 14 | Pusey | 1,574 | (10.7) | | |
| 15 | Randolph, B. | 1,546 | (10.5) | | |
| 16 | Edwards | 529 | ( 3.6) | | |
| Total | | 14,666* | (100.0) | 13,515* | (100.0) |
| Referendum: | For | 6,662 | (45.4) | | |
| | Against | 3,151 | (21.5) | | |
| | Abstain | 4,853 | (33.1) | | |

*Does not include split precincts 3, 8, 11, 12, 17, 23, 25, 29, 34, 52, 54, 56, 57, 58 and 68

(Precincts 3 and 8 are omitted from 1966 list because they appear more accurately classified as split)



TABLE 8A
Councilmanic Election – June 11, 1968
Estimated White and Negro Vote in Split Precincts
Precincts 3, 8, 11, 12, 17, 23, 25, 29, 34, 45, 52, 54, 56, 57, 58, 68
(Precincts 11, 12, 29, 34, 52 are added to 1966 listing)
Precincts 3 and 8 are transferred from all Negro precincts

| Rank | Candidate | Estimated Negro Vote | Estimated White Vote | Total Vote |
|---|---|---|---|---|
| 1 | Carwile | 4,601 | 1,602 | 6,203 |
| 2 | Carpenter | 3,935 | 1,476 | 5,411 |
| 3 | Marsh | 4,469 | 739 | 5,208 |
| 4 | Bagley | 1,020 | 3,465 | 4,485 |
| 5 | Bliley | 777 | 3,557 | 4,334 |
| 6 | Kenney | 3,369 | 700 | 4,069 |
| 7 | Crowe | 912 | 3,073 | 3,985 |
| 8 | Forb | 638 | 3,182 | 3,820 |
| 9 | Randolph, M. | 3,196 | 557 | 3,753 |
| 10 | Wheat | 610 | 3,032 | 3,642 |
| 11 | Pusey | 665 | 2,945 | 3,610 |
| 12 | Randolph, B. | 715 | 2,843 | 3,561 |
| 13 | Cephas | 1,335 | 2,141 | 3,476 |
| 14 | Mundle | 1,135 | 2,150 | 3,285 |
| 15 | Edwards | 392 | 1,191 | 1,583 |
| 16 | Bradley | 711 | 411 | 1,122 |

TABLE 8B
Councilmanic Election – June 11, 1968
Estimated Total White and Negro Vote

WHITE

| Rank | Candidate | Estimated Vote 1968 | Estimated Vote 1966 | Percentage 1968 | Percentage 1966 |
|---|---|---|---|---|---|
| 1 | Bagley | 21,194 | 15,463 | 84.6 | 75.5 |
| 2 | Bliley | 20,898 | | 83.4 | |
| 3 | Forb | 19,653 | | 78.4 | |
| 4 | Crowe | 19,435 | 13,871 | 77.5 | 67.7 |
| 5 | Wheat | 19,232 | 13,629 | 76.7 | 66.5 |
| 6 | Pusey | 18,477 | | 73.7 | |
| 7 | Randolph, B. | 16,384 | | 65.4 | |
| 8 | Cephas | 14,907 | 10,783 | 59.5 | 52.6 |
| 9 | Mundle | 14,788 | 7,406 | 59.0 | 36.1 |
| 10 | Carwile | 8,071 | 6,497 | 32.2 | 31.7 |
| 11 | Carpenter | 7,622 | | 30.4 | |
| 12 | Edwards | 5,305 | | 21.2 | |
| 13 | Marsh | 4,632 | 4,667 | 18.5 | 22.8 |
| 14 | Randolph, M. | 2,426 | | 9.7 | |
| 15 | Kenney | 2,244 | | 8.9 | |
| 16 | Bradley | 2,050 | | 8.2 | |

| Total White Vote: | 1968 | 1966 | 1964 |
|---|---|---|---|
| | 25,059 | 20,485 | 21,093 |
| Percentage of Total Vote: | 55.8 | 56.5 | 68.2 |



NEGRO

| Rank | Candidate | Estimated Vote 1968 | Estimated Vote 1966 | Percentage 1968 | Percentage 1966 |
|---|---|---|---|---|---|
| 1 | Marsh | 17,382 | 13,145 | 90.0 | 83.3 |
| 2 | Carwile | 17,290 | 9,859 | 87.2 | 62.5 |
| 3 | Carpenter | 14,469 | | 73.0 | |
| 4 | Kenney | 14,128 | | 71.3 | |
| 5 | Randolph, M. | 12,856 | | 64.9 | |
| 6 | Cephas | 4,768 | 12,174 | 24.0 | 77.2 |
| 7 | Mundle | 4,057 | 10,880 | 20.5 | 70.0 |
| 8 | Bagley | 3,410 | 8,534 | 17.2 | 54.1 |
| 9 | Crowe | 3,196 | 5,231 | 16.1 | 33.2 |
| 10 | Bliley | 2,654 | | 13.4 | |
| 11 | Bradley | 2,392 | | 12.1 | |
| 12 | Randolph, B. | 2,365 | | 11.9 | |
| 13 | Forb | 2,307 | | 11.6 | |
| 14 | Pusey | 2,279 | | 11.5 | |
| 15 | Wheat | 2,205 | 4,174 | 11.1 | 26.5 |
| 16 | Edwards | 921 | | 4.6 | |

| Total Negro Vote: | 1968 | 1966 | 1964 |
|---|---|---|---|
| | 19,821 | 15,763 | 9,835 |
| Percentage of Total Vote: | 44.2 | 43.5 | 31.8 |

TABLE 8C
Councilmanic Election – June 11, 1968
Estimated Percentage of Total Negro Vote by Area

| Rank | Candidate | Central (1, 3*, 4, 5, 45*) | South (6, 7, 8*, 9, 11*, 12*) | West (17*, 18, 19, 23, 24, 25*, 29*, 34*) | North (46, 47, 52*, 54*, 55, 56*, 57*, 58*) | East (62, 63, 64, 65, 66, 67, 68*) |
|---|---|---|---|---|---|---|
| 1 | Marsh | 80.5 | 73.6 | 92.7 | 92.5 | 93.6 |
| 2 | Carwile | 80.7 | 79.9 | 94.9 | 80.4 | 91.1 |
| 3 | Carpenter | 74.4 | 62.2 | 72.3 | 74.7 | 78.7 |
| 4 | Kenney | 68.1 | 57.6 | 70.0 | 65.3 | 80.3 |
| 5 | Randolph, M. | 60.7 | 53.5 | 67.1 | 61.8 | 69.7 |
| 6 | Cephas | 23.7 | 23.0 | 22.0 | 34.4 | 18.8 |
| 7 | Mundle | 21.3 | 19.9 | 18.5 | 28.1 | 16.5 |
| 8 | Bagley | 18.0 | 26.5 | 15.6 | 21.1 | 12.8 |
| 9 | Crowe | 19.7 | 20.1 | 15.1 | 21.3 | 11.3 |
| 10 | Bliley | 16.4 | 23.9 | 14.0 | 13.3 | 9.5 |
| 11 | Bradley | 13.1 | 14.5 | 16.2 | 11.4 | 9.4 |
| 12 | Randolph, B. | 11.5 | 25.1 | 11.7 | 10.1 | 9.8 |
| 13 | Forb | 11.4 | 20.1 | 11.6 | 13.2 | 8.4 |
| 14 | Pusey | 12.1 | 16.7 | 10.9 | 14.7 | 8.1 |
| 15 | Wheat | 11.2 | 17.1 | 10.1 | 13.9 | 8.2 |
| 16 | Edwards | 4.2 | 12.7 | 7.0 | 2.4 | 2.7 |

*Indicates split precinct.

TABLE 8D
Councilmanic Election – June 11, 1968
Analysis of Referendum Vote

| | NEGRO Vote | % | WHITE Vote | % | TOTAL Vote | % |
|---|---|---|---|---|---|---|
| For: | 8,890 | 44.8 | 6,361 | 25.4 | 15,251 | 34.0 |
| Against: | 4,408 | 22.2 | 16,302 | 65.0 | 20,710 | 46.0 |
| Abstain: | 6,523 | 33.0 | 2,396 | 9.6 | 8,919 | 20.0 |
| | 19,821 | 100.0 | 25,059 | 100.0 | 44,880 | 100.0 |



TABLE 9
Councilmanic Election – June 11, 1968

| | | Percentage by Precinct | | | | | | |
|---|---|---|---|---|---|---|---|---|
| Candidate: | % of Total Vote (44,880) | 1 (441) | 2 (356) | 3 (340) | 4 (711) | 5 (193) | 6 (424) | 7 (651) |
| Bagley | 54.9 | 17.2 | 84.2 | 42.1 | 15.7 | 27.5 | 24.5 | 17.9 |
| Bliley | 52.6 | 14.3 | 84.2 | 45.6 | 13.1 | 26.4 | 22.9 | 18.6 |
| Bradley | 9.9 | 15.2 | 8.1 | 14.7 | 10.4 | 9.8 | 17.2 | 12.7 |
| Carpenter | 49.3 | 84.1 | 21.6 | 52.6 | 67.9 | 63.2 | 63.7 | 71.3 |
| Carwile | 56.6 | 68.7 | 23.9 | 69.7 | 90.5 | 79.3 | 85.6 | 89.2 |
| Cephas | 43.9 | 26.3 | 66.5 | 37.1 | 19.9 | 30.6 | 23.1 | 22.1 |
| Crowe | 50.5 | 21.3 | 84.2 | 42.6 | 14.9 | 30.6 | 18.9 | 15.1 |
| Edwards | 13.8 | 3.9 | 10.9 | 10.3 | 2.8 | 4.1 | 7.8 | 6.6 |
| Forb | 49.0 | 11.6 | 81.9 | 32.6 | 10.5 | 20.2 | 25.7 | 13.4 |
| Kenney | 36.6 | 70.7 | 8.9 | 46.2 | 69.0 | 56.9 | 62.7 | 69.4 |
| Marsh | 49.2 | 85.7 | 17.4 | 60.6 | 88.4 | 80.3 | 78.5 | 84.5 |
| Mundle | 42.1 | 23.1 | 66.8 | 37.4 | 17.9 | 25.9 | 20.0 | 22.7 |
| Pusey | 45.9 | 10.9 | 79.2 | 34.7 | 10.5 | 23.8 | 16.5 | 11.4 |
| Randolph, B. | 41.9 | 10.2 | 69.6 | 32.9 | 9.8 | 20.7 | 21.9 | 14.1 |
| Randolph, M. | 34.1 | 58.0 | 11.5 | 44.9 | 63.8 | 56.5 | 58.0 | 66.9 |
| Wheat | 47.9 | 12.2 | 83.9 | 34.7 | 8.5 | 20.7 | 17.9 | 12.7 |
| % Increase (Decrease) | | 5.2 | 26.2 | 5.9 | 3.6 | (15.7) | 17.8 | 20.6 |
| % Voting | | 53.1 | 48.2 | 34.4 | 48.8 | 37.4 | 43.6 | 55.4 |

TABLE 9 – Part 2
Councilmanic Election – June 11, 1968

**Percentage by Precinct**

| Candidate: | % of Total Vote (44,880) | 8 (477) | 9 (384) | 10 (368) | 11 (393) | 12 (493) | 13 (526) | 14 (871) |
|---|---|---|---|---|---|---|---|---|
| Bagley | 54.9 | 42.9 | 32.6 | 89.1 | 71.7 | 65.3 | 84.9 | 85.4 |
| Bliley | 52.6 | 42.1 | 25.5 | 84.2 | 73.5 | 65.7 | 87.8 | 87.6 |
| Bradley | 9.9 | 12.2 | 15.6 | 13.6 | 12.2 | 11.8 | 7.9 | 9.7 |
| Carpenter | 49.3 | 61.4 | 60.9 | 34.5 | 46.3 | 44.8 | 31.4 | 32.6 |
| Carwile | 56.6 | 75.2 | 82.8 | 39.1 | 49.1 | 49.3 | 30.0 | 33.2 |
| Cephas | 43.9 | 31.6 | 24.9 | 58.7 | 41.2 | 48.1 | 55.5 | 61.9 |
| Crowe | 50.5 | 35.0 | 25.7 | 73.4 | 56.5 | 54.8 | 77.4 | 80.6 |
| Edwards | 13.8 | 20.1 | 14.1 | 30.2 | 36.9 | 26.4 | 33.8 | 26.5 |
| Forb | 49.0 | 32.3 | 21.9 | 75.3 | 63.1 | 54.9 | 77.6 | 76.7 |
| Kenney | 36.6 | 47.2 | 53.4 | 16.3 | 22.6 | 30.2 | 5.1 | 9.2 |
| Marsh | 49.2 | 62.5 | 75.5 | 21.5 | 31.0 | 41.4 | 12.3 | 19.5 |
| Mundle | 42.1 | 29.1 | 21.6 | 53.8 | 39.4 | 42.8 | 54.9 | 60.0 |
| Pusey | 45.9 | 32.9 | 16.7 | 72.8 | 57.2 | 51.5 | 75.1 | 74.9 |
| Randolph, B. | 41.9 | 34.2 | 23.7 | 62.5 | 62.8 | 60.0 | 64.6 | 68.3 |
| Randolph, M. | 34.1 | 46.5 | 53.1 | 13.3 | 18.3 | 26.6 | 7.9 | 9.9 |
| Wheat | 47.9 | 29.6 | 19.8 | 74.2 | 60.3 | 53.5 | 76.8 | 78.3 |
| % Increase (Decrease) | | 26.2 | 23.1 | 59.3 | 20.5 | 40.5 | 17.9 | 48.4 |
| % Voting | | 48.5 | 53.7 | 59.1 | 51.4 | 37.3 | 60.3 | 51.4 |



TABLE 9 – Part 3
Councilmanic Election – June 11, 1968

**Percentage by Precinct**

| Candidate: | % of Total Vote (44,880) | 15 (943) | 16 (949) | 17 (288) | 18 (1,114) | 19 (630) | 20 (578) | 21 (525) |
|---|---|---|---|---|---|---|---|---|
| Bagley | 54.9 | 86.8 | 71.2 | 51.7 | 12.8 | 19.7 | 36.7 | 86.6 |
| Bliley | 52.6 | 87.0 | 57.8 | 47.9 | 7.6 | 19.9 | 82.3 | 86.1 |
| Bradley | 9.9 | 7.2 | 16.1 | 16.7 | 13.7 | 13.8 | 9.3 | 8.6 |
| Carpenter | 49.3 | 27.7 | 53.9 | 50.3 | 67.1 | 67.1 | 24.6 | 24.6 |
| Carwile | 56.6 | 28.6 | 63.6 | 76.0 | 94.0 | 92.2 | 21.8 | 27.4 |
| Cephas | 43.9 | 57.9 | 34.6 | 28.8 | 21.9 | 26.7 | 71.4 | 71.4 |
| Crowe | 50.5 | 77.1 | 55.6 | 36.8 | 12.6 | 24.1 | 83.9 | 81.7 |
| Edwards | 13.8 | 24.5 | 33.5 | 24.9 | 1.9 | 6.3 | 11.9 | 17.5 |
| Forb | 49.0 | 82.8 | 69.7 | 34.7 | 8.9 | 17.6 | 78.2 | 78.3 |
| Kenney | 36.6 | 5.7 | 21.4 | 37.8 | 75.2 | 67.9 | 10.6 | 7.6 |
| Marsh | 49.2 | 12.6 | 32.9 | 50.3 | 92.7 | 89.5 | 19.2 | 17.9 |
| Mundle | 42.1 | 59.7 | 31.3 | 22.2 | 19.7 | 24.4 | 71.9 | 72.5 |
| Pusey | 45.9 | 76.1 | 53.7 | 37.5 | 9.2 | 15.9 | 81.3 | 75.9 |
| Randolph, B. | 41.9 | 66.5 | 53.7 | 43.4 | 7.2 | 17.1 | 65.2 | 66.8 |
| Randolph, M. | 34.1 | 7.7 | 22.0 | 34.4 | 72.7 | 63.5 | 7.9 | 8.8 |
| Wheat | 47.9 | 76.0 | 54.7 | 34.4 | 7.2 | 17.5 | 82.3 | 80.9 |
| % Increase (Decrease) | | 33.9 | 86.4 | 27.4 | 2.9 | (6.8) | 18.7 | 26.8 |
| % Voting | | 66.2 | 41.2 | 44.7 | 58.1 | 50.9 | 53.9 | 60.0 |

TABLE 9 – Part 4
Councilmanic Election – June 11, 1968

**Percentage by Precinct**

| Candidate: | % of Total Vote (44,880) | 22 (490) | 23 (385) | 24 (859) | 25 (1,102) | 26 (283) | 27 (339) | 28 (457) |
|---|---|---|---|---|---|---|---|---|
| Bagley | 54.9 | 84.9 | 36.6 | 16.5 | 40.9 | 85.9 | 86.4 | 82.9 |
| Bliley | 52.6 | 85.1 | 34.3 | 14.8 | 39.5 | 83.4 | 87.3 | 85.8 |
| Bradley | 9.9 | 9.4 | 16.6 | 18.2 | 10.8 | 12.4 | 7.9 | 9.6 |
| Carpenter | 49.3 | 27.9 | 61.0 | 68.7 | 62.3 | 34.3 | 43.6 | 34.3 |
| Carwile | 56.6 | 32.0 | 75.3 | 89.0 | 70.2 | 34.9 | 33.3 | 38.3 |
| Cephas | 43.9 | 56.7 | 26.2 | 22.2 | 37.5 | 53.3 | 55.7 | 59.5 |
| Crowe | 50.5 | 78.9 | 39.9 | 14.9 | 37.3 | 75.9 | 76.9 | 75.9 |
| Edwards | 13.8 | 22.2 | 15.6 | 4.3 | 11.2 | 27.2 | 20.6 | 21.2 |
| Forb | 49.0 | 71.8 | 28.0 | 12.2 | 35.0 | 72.1 | 72.5 | 76.6 |
| Kenney | 36.6 | 9.2 | 52.7 | 69.3 | 47.9 | 7.8 | 6.5 | 7.7 |
| Marsh | 49.2 | 13.3 | 65.4 | 91.7 | 68.4 | 19.4 | 16.2 | 14.4 |
| Mundle | 42.1 | 55.7 | 25.2 | 17.3 | 36.0 | 48.4 | 55.4 | 57.1 |
| Pusey | 45.9 | 73.8 | 29.3 | 10.4 | 34.1 | 69.6 | 68.4 | 69.6 |
| Randolph, B. | 41.9 | 71.8 | 34.0 | 11.5 | 31.3 | 66.1 | 63.9 | 66.3 |
| Randolph, M. | 34.1 | 8.2 | 47.5 | 64.5 | 46.5 | 6.7 | 9.7 | 7.4 |
| Wheat | 47.9 | 75.1 | 27.3 | 10.5 | 31.7 | 73.8 | 72.5 | 73.5 |
| % Increase (Decrease) | | 26.6 | 13.9 | (4.3) | 12.6 | 16.9 | 34.5 | 34.4 |
| % Voting | | 52.8 | 49.9 | 60.7 | 57.0 | 49.4 | 52.7 | 58.5 |



TABLE 9 – Part 5
Councilmanic Election – June 11, 1968

**Percentage by Precinct**

| Candidate: | % of Total Vote (44,880) | 29 (368) | 30 (838) | 31 (654) | 32 (1,142) | 33 (822) | 34 (802) | 35 (732) |
|---|---|---|---|---|---|---|---|---|
| Bagley | 54.9 | 69.8 | 83.9 | 85.5 | 92.2 | 88.0 | 77.4 | 88.5 |
| Bliley | 52.6 | 73.1 | 83.9 | 80.9 | 90.0 | 84.9 | 77.1 | 83.7 |
| Bradley | 9.9 | 14.4 | 6.8 | 6.1 | 3.6 | 4.5 | 8.3 | 3.0 |
| Carpenter | 49.3 | 57.3 | 28.9 | 21.1 | 14.9 | 24.7 | 35.9 | 15.9 |
| Carwile | 56.6 | 57.9 | 24.3 | 24.2 | 11.9 | 22.4 | 33.8 | 10.8 |
| Cephas | 43.9 | 39.7 | 59.9 | 64.1 | 76.9 | 66.9 | 59.4 | 71.0 |
| Crowe | 50.5 | 58.1 | 78.9 | 81.8 | 81.8 | 83.7 | 74.4 | 87.8 |
| Edwards | 13.8 | 36.1 | 18.5 | 11.9 | 7.5 | 13.1 | 16.3 | 9.3 |
| Forb | 49.0 | 62.5 | 79.6 | 84.4 | 86.5 | 85.9 | 73.0 | 87.1 |
| Kenney | 36.6 | 15.8 | 6.6 | 3.7 | 2.3 | 3.4 | 13.1 | 2.0 |
| Marsh | 49.2 | 21.2 | 15.0 | 12.4 | 8.3 | 13.6 | 26.5 | 9.4 |
| Mundle | 42.1 | 35.9 | 62.9 | 49.5 | 78.2 | 66.8 | 58.8 | 71.8 |
| Pusey | 45.9 | 52.9 | 71.8 | 75.7 | 84.6 | 79.6 | 70.1 | 79.9 |
| Randolph, B. | 41.9 | 59.5 | 64.1 | 80.7 | 70.9 | 63.5 | 58.7 | 62.8 |
| Randolph, M. | 34.1 | 14.9 | 8.5 | 4.3 | 4.0 | 5.1 | 15.3 | 3.6 |
| Wheat | 47.9 | 57.3 | 78.6 | 81.6 | 88.0 | 83.7 | 73.4 | 86.7 |
| % Increase (Decrease) | | 1.4 | 44.5 | 34.0 | 10.6 | 27.0 | 24.1 | 22.2 |
| % Voting | | 41.9 | 56.2 | 67.0 | 84.9 | 69.2 | 73.9 | 69.6 |

TABLE 9 – Part 6
Councilmanic Election – June 11, 1968

**Percentage by Precinct**

| Candidate: | % of Total Vote (44,880) | 36 (897) | 37 (547) | 38 (1,049) | 39 (687) | 40 (480) | 41 (327) | 42 (377) |
|---|---|---|---|---|---|---|---|---|
| Bagley | 54.9 | 88.0 | 94.8 | 80.8 | 85.8 | 79.4 | 84.4 | 81.4 |
| Bliley | 52.6 | 91.0 | 87.2 | 76.0 | 83.1 | 81.0 | 80.4 | 80.4 |
| Bradley | 9.9 | 6.9 | 2.4 | 5.3 | 7.4 | 6.9 | 11.0 | 10.9 |
| Carpenter | 49.3 | 29.7 | 14.6 | 28.4 | 24.7 | 31.7 | 38.2 | 37.7 |
| Carwile | 56.6 | 27.6 | 8.9 | 31.8 | 23.6 | 26.5 | 34.9 | 34.2 |
| Cephas | 43.9 | 65.7 | 82.1 | 55.4 | 67.1 | 62.9 | 47.4 | 58.1 |
| Crowe | 50.5 | 82.1 | 91.8 | 76.0 | 82.4 | 78.9 | 74.0 | 71.6 |
| Edwards | 13.8 | 14.9 | 4.9 | 19.1 | 13.4 | 18.7 | 27.5 | 21.2 |
| Forb | 49.0 | 81.7 | 87.6 | 83.6 | 86.3 | 75.4 | 71.6 | 75.8 |
| Kenney | 36.6 | 7.5 | 3.1 | 6.0 | 4.8 | 7.1 | 7.9 | 8.8 |
| Marsh | 49.2 | 15.9 | 10.2 | 14.0 | 13.2 | 19.4 | 18.0 | 14.9 |
| Mundle | 42.1 | 64.7 | 83.5 | 56.2 | 65.3 | 62.3 | 52.9 | 54.6 |
| Pusey | 45.9 | 77.5 | 87.4 | 67.9 | 73.5 | 72.5 | 68.2 | 71.9 |
| Randolph, B. | 41.9 | 64.3 | 54.7 | 59.9 | 65.6 | 68.1 | 66.4 | 59.9 |
| Randolph, M. | 34.1 | 7.5 | 3.8 | 8.5 | 7.9 | 10.4 | 9.5 | 8.5 |
| Wheat | 47.9 | 80.7 | 92.9 | 69.3 | 79.2 | 77.1 | 77.4 | 71.3 |
| % Increase (Decrease) | | 27.1 | 24.0 | 33.3 | 28.4 | 28.3 | 26.7 | 21.6 |
| % Voting | | 58.2 | 65.4 | 63.4 | 65.8 | 52.3 | 49.4 | 52.1 |



TABLE 9 – Part 7
Councilmanic Election – June 11, 1968

**Percentage by Precinct**

| Candidate: | % of Total Vote (44,880) | 43 (398) | 44 (410) | 45 (568) | 46 (1,073) | 47 (578) | 48 (935) | 49 (1,007) |
|---|---|---|---|---|---|---|---|---|
| Bagley | 54.9 | 83.4 | 84.9 | 46.1 | 19.0 | 23.9 | 88.2 | 90.1 |
| Bliley | 52.6 | 81.9 | 85.6 | 44.7 | 13.3 | 18.7 | 88.6 | 89.7 |
| Bradley | 9.9 | 12.1 | 8.5 | 12.7 | 10.9 | 11.9 | 5.8 | 5.5 |
| Carpenter | 49.3 | 30.4 | 27.1 | 50.2 | 67.0 | 70.4 | 33.9 | 28.7 |
| Carwile | 56.6 | 36.4 | 27.8 | 64.2 | 85.7 | 83.6 | 24.2 | 24.4 |
| Cephas | 43.9 | 56.0 | 60.3 | 39.8 | 35.5 | 39.6 | 64.6 | 65.0 |
| Crowe | 50.5 | 76.6 | 78.5 | 45.2 | 21.9 | 25.4 | 83.4 | 85.1 |
| Edwards | 13.8 | 20.3 | 17.6 | 11.8 | 2.4 | 4.5 | 18.4 | 21.3 |
| Forb | 49.0 | 73.9 | 74.9 | 42.8 | 12.6 | 15.7 | 79.9 | 84.4 |
| Kenney | 36.6 | 7.0 | 7.1 | 41.5 | 66.4 | 63.1 | 5.5 | 4.5 |
| Marsh | 49.2 | 17.3 | 18.0 | 53.9 | 95.2 | 87.5 | 15.3 | 11.3 |
| Mundle | 42.1 | 56.8 | 67.6 | 38.2 | 23.2 | 31.5 | 67.0 | 64.7 |
| Pusey | 45.9 | 72.3 | 74.6 | 39.8 | 11.5 | 18.2 | 77.8 | 81.0 |
| Randolph, B. | 41.9 | 59.8 | 61.9 | 32.9 | 9.5 | 13.7 | 66.1 | 68.5 |
| Randolph, M. | 34.1 | 10.0 | 9.8 | 40.3 | 53.1 | 61.8 | 7.1 | 4.9 |
| Wheat | 47.9 | 76.1 | 80.7 | 41.5 | 12.8 | 19.7 | 80.9 | 85.8 |
| % Increase (Decrease) | | 24.8 | 22.4 | 22.7 | 4.4 | 8.4 | 29.8 | 35.2 |
| % Voting | | 45.7 | 53.1 | 52.8 | 60.7 | 60.0 | 58.1 | 63.1 |

TABLE 9 – Part 8
Councilmanic Election – June 11, 1968

**Percentage by Precinct**

| Candidate: | % of Total Vote (44,880) | 50 (564) | 51 (569) | 52 (746) | 53 (679) | 54 (538) | 55 (841) | 56 (592) |
|---|---|---|---|---|---|---|---|---|
| Bagley | 54.9 | 89.4 | 87.5 | 49.7 | 81.1 | 26.4 | 21.3 | 30.9 |
| Bliley | 52.6 | 88.1 | 86.6 | 46.3 | 79.6 | 21.4 | 12.2 | 27.2 |
| Bradley | 9.9 | 6.7 | 6.5 | 8.7 | 7.8 | 11.3 | 11.4 | 10.9 |
| Carpenter | 49.3 | 34.4 | 30.7 | 54.1 | 31.8 | 70.4 | 78.2 | 71.3 |
| Carwile | 56.6 | 24.5 | 29.7 | 57.6 | 28.9 | 78.9 | 86.4 | 78.5 |
| Cephas | 43.9 | 63.3 | 66.4 | 43.3 | 63.3 | 32.9 | 33.7 | 33.3 |
| Crowe | 50.5 | 83.7 | 82.9 | 47.9 | 78.3 | 24.7 | 20.3 | 30.4 |
| Edwards | 13.8 | 20.4 | 20.0 | 12.7 | 16.6 | 4.3 | 2.0 | 7.6 |
| Forb | 49.0 | 78.5 | 78.5 | 45.7 | 73.9 | 20.3 | 12.9 | 25.2 |
| Kenney | 36.6 | 3.2 | 3.7 | 42.7 | 12.4 | 57.9 | 65.5 | 65.9 |
| Marsh | 49.2 | 12.4 | 12.7 | 51.2 | 23.8 | 85.5 | 92.5 | 77.4 |
| Mundle | 42.1 | 63.5 | 63.3 | 40.5 | 63.7 | 32.5 | 29.8 | 30.2 |
| Pusey | 45.9 | 80.5 | 77.7 | 45.2 | 71.8 | 20.8 | 13.9 | 26.5 |
| Randolph, B. | 41.9 | 65.9 | 72.0 | 38.1 | 60.1 | 17.8 | 9.6 | 26.0 |
| Randolph, M. | 34.1 | 7.6 | 5.6 | 40.3 | 13.9 | 57.2 | 65.0 | 58.9 |
| Wheat | 47.9 | 81.7 | 81.7 | 43.1 | 76.9 | 18.6 | 13.2 | 26.5 |
| % Increase (Decrease) | | 25.6 | 24.8 | 40.5 | 36.0 | 15.2 | 5.8 | 63.9 |
| % Voting | | 59.9 | 56.2 | 60.3 | 52.7 | 63.7 | 81.2 | 55.5 |



TABLE 9 – Part 9
Councilmanic Election – June 11, 1968

**Percentage by Precinct**

| Candidate: | % of Total Vote (44,880) | 57 (735) | 58 (560) | 59 (340) | 60 (347) | 61 (324) | 62 (1,559) | 63 (484) |
|---|---|---|---|---|---|---|---|---|
| Bagley | 54.9 | 22.3 | 56.0 | 67.9 | 82.4 | 76.8 | 9.7 | 12.4 |
| Bliley | 52.6 | 17.4 | 53.0 | 63.2 | 80.4 | 77.8 | 7.7 | 13.0 |
| Bradley | 9.9 | 12.5 | 15.5 | 11.8 | 14.1 | 16.0 | 7.1 | 8.0 |
| Carpenter | 49.3 | 70.9 | 59.6 | 42.1 | 34.9 | 38.3 | 78.8 | 72.9 |
| Carwile | 56.6 | 85.8 | 64.8 | 61.5 | 59.3 | 49.4 | 92.6 | 93.8 |
| Cephas | 43.9 | 27.5 | 34.8 | 35.9 | 36.6 | 41.4 | 16.5 | 19.8 |
| Crowe | 50.5 | 18.8 | 45.2 | 52.3 | 63.9 | 65.1 | 10.1 | 10.3 |
| Edwards | 13.8 | 4.6 | 26.2 | 36.8 | 41.2 | 38.6 | 2.6 | 4.5 |
| Forb | 49.0 | 15.2 | 48.0 | 56.8 | 70.6 | 68.8 | 8.3 | 7.2 |
| Kenney | 36.6 | 66.3 | 40.3 | 22.4 | 10.4 | 13.6 | 84.6 | 76.4 |
| Marsh | 49.2 | 86.2 | 47.3 | 35.6 | 20.5 | 20.1 | 95.4 | 90.6 |
| Mundle | 42.1 | 24.1 | 32.5 | 31.8 | 34.6 | 42.6 | 14.4 | 15.7 |
| Pusey | 45.9 | 15.2 | 45.5 | 51.2 | 65.4 | 53.6 | 7.5 | 7.9 |
| Randolph, B. | 41.9 | 14.3 | 43.4 | 59.1 | 69.4 | 58.0 | 8.5 | 14.3 |
| Randolph, M. | 34.1 | 62.6 | 37.5 | 23.2 | 10.4 | 12.9 | 73.3 | 70.0 |
| Wheat | 47.9 | 16.2 | 42.3 | 53.5 | 62.8 | 66.7 | 7.1 | 7.0 |
| % Increase (Decrease) | | 37.9 | 27.3 | 18.9 | 17.2 | 26.1 | 29.1 | 25.7 |
| % Voting | | 61.4 | 53.0 | 47.6 | 48.9 | 47.0 | 63.6 | 49.8 |

TABLE 9 – Part 10
Councilmanic Election – June 11, 1968

**Percentage by Precinct**

| Candidate: | % of Total Vote (44,880) | 64 (1,644) | 65 (858) | 66 (925) | 67 (1,297) | 68 (1,015) |
|---|---|---|---|---|---|---|
| Bagley | 54.9 | 13.0 | 16.1 | 15.9 | 12.3 | 46.9 |
| Bliley | 52.6 | 9.5 | 13.3 | 13.4 | 6.6 | 45.3 |
| Bradley | 9.9 | 10.1 | 10.6 | 8.6 | 10.8 | 13.0 |
| Carpenter | 49.3 | 76.9 | 61.9 | 68.8 | 78.6 | 61.8 |
| Carwile | 49.3 | 91.9 | 92.5 | 86.9 | 89.7 | 71.4 |
| Cephas | 43.9 | 18.6 | 23.8 | 20.3 | 17.7 | 25.5 |
| Crowe | 50.5 | 11.1 | 15.1 | 13.3 | 10.2 | 37.0 |
| Edwards | 13.8 | 2.4 | 2.7 | 2.5 | 2.9 | 23.9 |
| Forb | 49.0 | 8.0 | 10.8 | 8.6 | 8.0 | 39.7 |
| Kenney | 36.6 | 82.8 | 78.1 | 72.2 | 80.3 | 47.6 |
| Marsh | 49.2 | 96.0 | 91.7 | 89.9 | 93.4 | 52.3 |
| Mundle | 42.1 | 16.2 | 20.7 | 18.7 | 15.7 | 25.5 |
| Pusey | 45.9 | 8.6 | 10.1 | 9.7 | 6.6 | 39.7 |
| Randolph, B. | 41.9 | 9.9 | 10.0 | 10.2 | 9.5 | 37.8 |
| Randolph, M. | 34.1 | 69.1 | 67.8 | 65.1 | 70.4 | 38.6 |
| Wheat | 47.9 | 8.3 | 11.3 | 9.9 | 7.1 | 35.3 |
| % Increase (Decrease) | | 40.0 | 28.1 | 18.7 | 24.5 | 27.2 |
| % Voting | | 62.2 | 51.1 | 59.4 | 61.5 | 50.7 |

HENRICO COUNTY

JAMES RIVER

CITY OF RICHMOND

HENRICO

JAMES COUNTY

ANNEXATION LINE

ROBIOUS

MIDLOTHIAN

MANCHESTER

DALE DIST

CHESTERFIELD

CENTRALIA

KINGSLAND

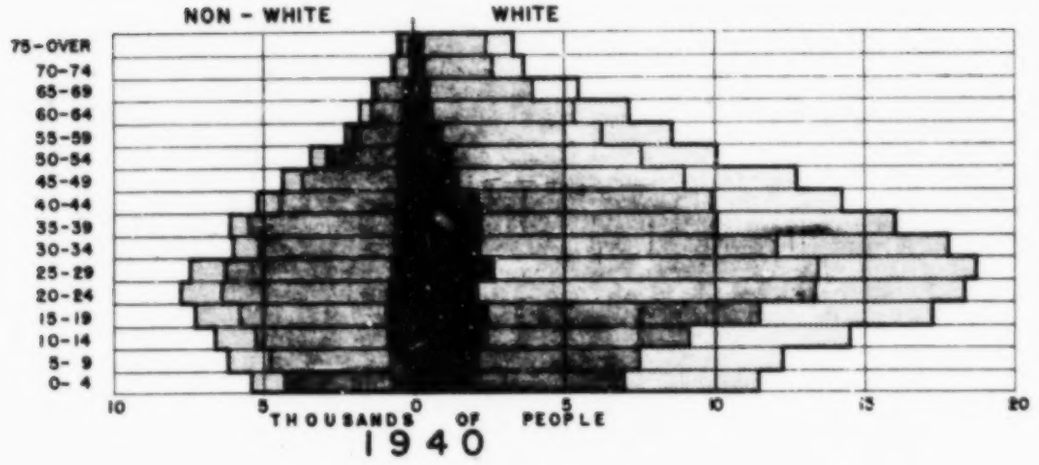
AMPT HILL

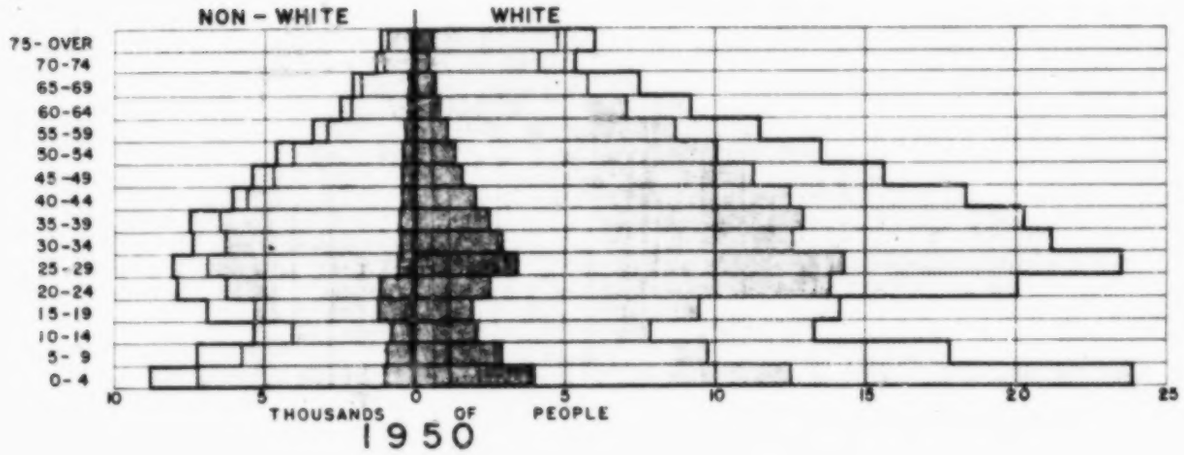
# CHESTERFIELD ANNEXATION AREA

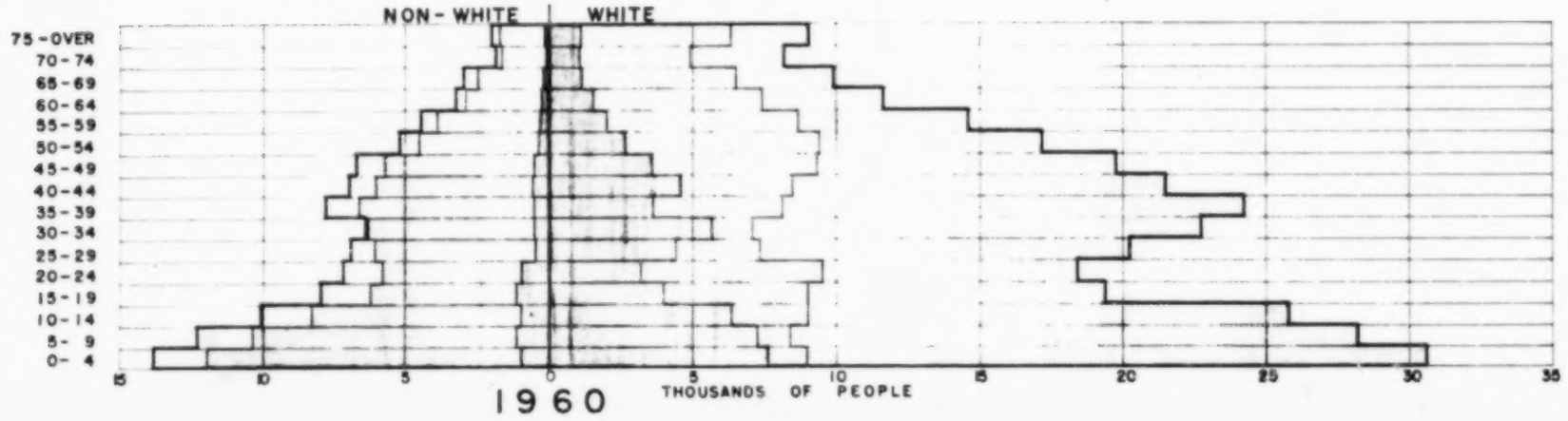
JULY 1, 1969 SCALE 1" = 3000'

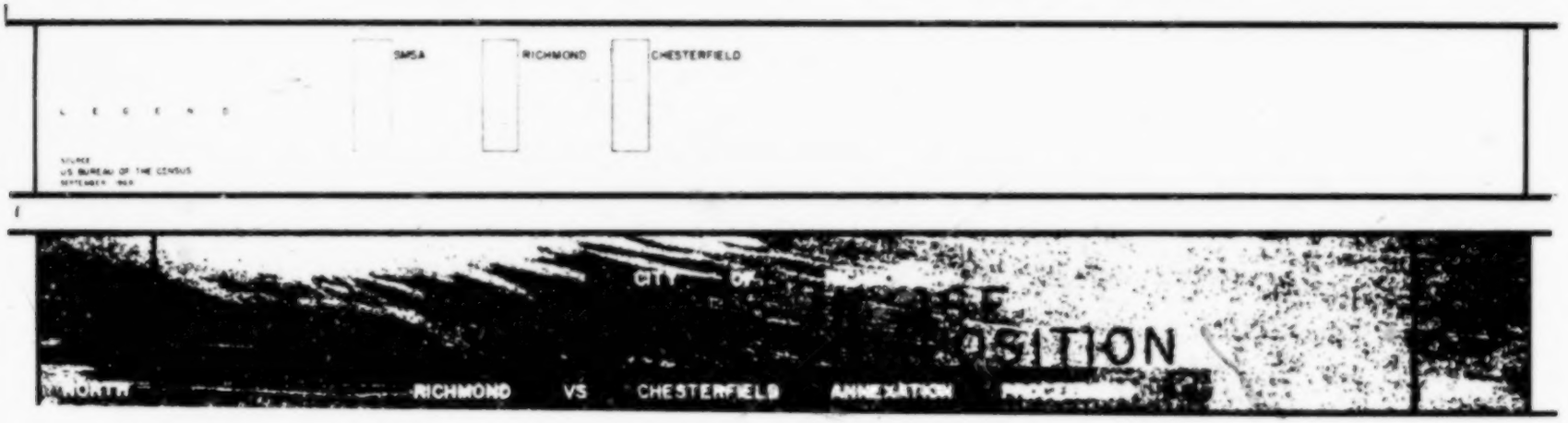
H. Plaintiff's Exhibit 10 — Map of Annexed Area.

Plaintiff's Example 12 (1)






TRENDS IN AGE AND RACE COMPOSITION—1940, 1950, 1960—SMSA, Richmond City and Chesterfield County

This exhibit graphically portrays the changing age and race composition of Richmond as contrasted to that of the total metropolitan area and Chesterfield County.

In 1940 and 1950, the pyramid of the City generally reflected that of the metropolitan area, as did the white population of Chesterfield County. The non-white population of Chesterfield County has been so small that it does not relate to the metropolitan composition trends.

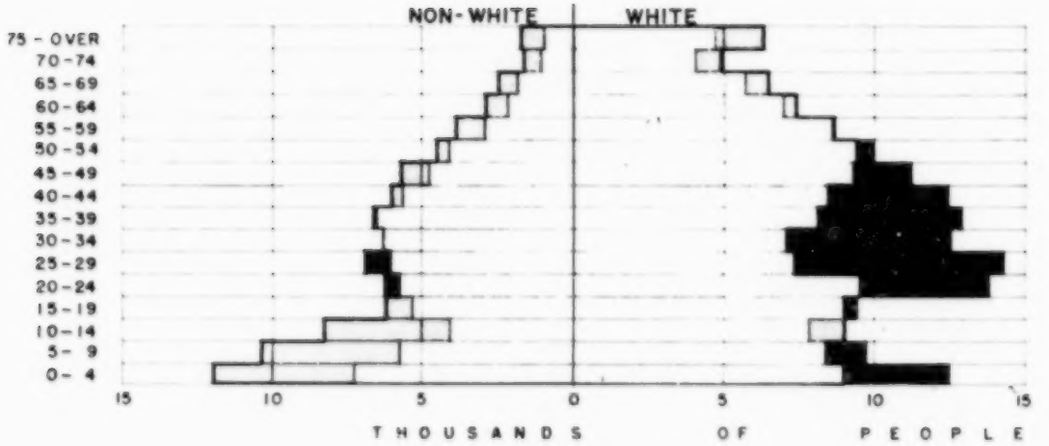
By 1960, a significant imbalance has occurred in the age composition of the City's population. There has been a drastic loss of white working-age adults and a sizeable increase in the very young and the very old non-white age groups.

Chesterfield County has shown a steady increase in white population since 1940, especially in the younger age groups and has had practically no change in its over all non-white composition.

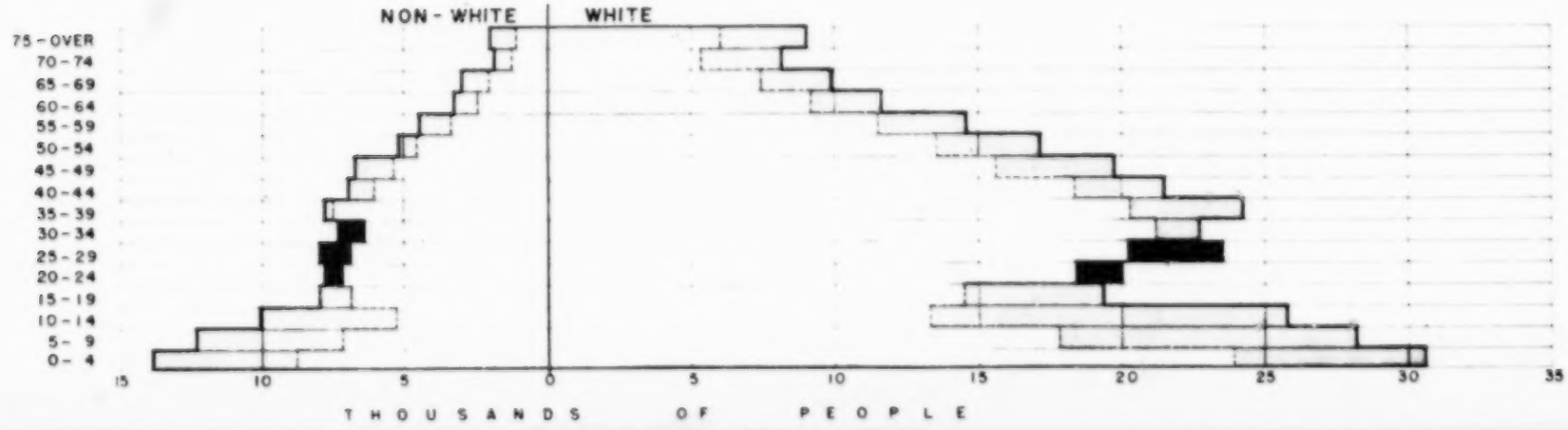
I. Plaintiff's Exhibit 12 (Def. Ex. 16) – Population, Race and Age Composition Charts. (2 Charts)

**Plaintiff's Example 12 (2)**

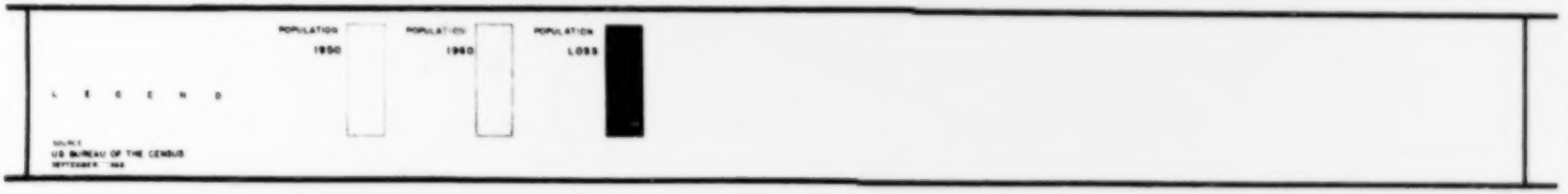
CHESTERFIELD




RICHMOND



SMSA




# POPULATION COMPOSITION CHANGES 1950-1960

26

POPULATION COMPOSITION CHANGE—1950 TO 1960—Richmond Chesterfield and SMSA

This exhibit shows quite graphically the imbalance in age composition that has been occurring in Richmond since 1950.

In the bottom diagram, it is evident that there was a steady increase in population, both white and non-white in all age groups in the SMSA from 1950 to 1960, with the largest increases for the white population. In the age groups 0-19, however, the non-white population also increased significantly.

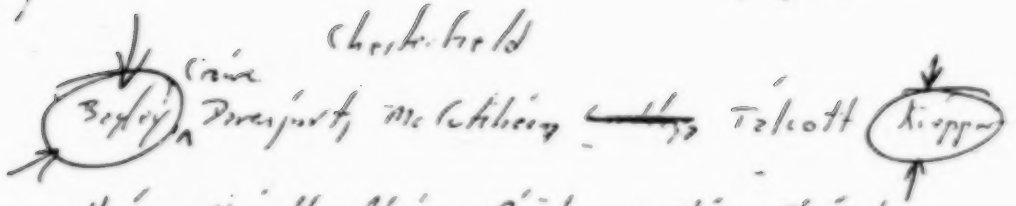
Chesterfield County had practically no change in non-white population, but significant increases in white population.

The City of Richmond gained in non-white population, with increases in the older age groups and extremely large increases in the 0-19 age groups. The white population declined drastically, with the loss occurring in the young adult ages from 20 to 45 and in 0-9 age group. Within the City, from 1950 to 1960, the non-white population increased 18,890 while the white population decreased 29,601, producing a net lost of 10,711.

137-c

6/19/69

Chesterfield




Hemer, Bingett, Alcorn, Painter, walker, Thornton

off the record meeting -
Hemer - Bagley Agreement

① No appeal by County - help to eliminate intervenors

② Schools - contractual arrangements would be worked out -
purchase buses - equitable basis

③ Bonds - equitable arrangement - share high interest rate

④ Utilities - easement lines thru city where needed -
jurisdiction to serve - most convenient

✓⑤ Protection of political appointees

⑥ Resolve real estate value differences by appraisal

⑦ schedule of future public improvements

⑧ Employee protection
hire in equivalent position

PL x 26

**L. Plaintiff's Exhibit 26 – Handwritten Notes of Meeting, dated June 19, 1969.**

**M. Plaintiff's Exhibit 29 – Crusade for Voters Letter, dated January 1, 1968.**

CRUSADE FOR VOTERS
206 East Clay Street
Richmond, Virginia 23219

January 1, 1968

Honorable Members
Richmond Delegation
General Assembly of Virginia
State Capitol
Richmond, Virginia

Dear Sirs:

This Memo has been duly prepared and authorized by the Richmond Crusade for Voters, to be specifically presented to each member of the Richmond delegation to the General Assembly of Virginia, as a Guideline of our interest and position regarding legislation coming up for passage during the 1968 Assembly.

(1) We propose that the adoption of The Hahn Report be deferred to a later meeting of the General Assembly.

(2) We are in favor of a mandatory school attendance law, throughout the state, covering ages from six to sixteen.

(3) We favor abolition of Tuition Grants for non-sectarian private schools.

(4) We favor annual sessions of the General Assembly.

(5) We advocate passage of necessary legislation to



authorize direct payments from the State to the City of Richmond for use of city tax exempt land, and services, in lieu of Taxes.

(6) We favor passage of necessary legislation, granting authority for Richmond City Council to fix time and place for Voter Registration for City of Richmond.

(7) We favor modification or elimination of State "Pay as you go" financing.

(8) We oppose the amendment of Sec. 702 of the City Charter in order to permit the sale of Bonds to cover annexation cost.

(9) We favor asking the General Assembly to impose a moratorium on the annexation of Chesterfield County and Richmond.

(10) We are in favor of State assumption of Welfare costs.

(11) We are in favor of repeal of 1946 resolution of opposition to local governing bodies recognizing labor unions to negotiate for city employees.

(12) We are in favor of passing a State minimum wage law.

(13) We are in favor of legislation providing for the establishment of and operation by the State, of its own Poverty Program.

(14) We are in favor of providing free textbooks for students in all sections of the State of Virginia.

If there are questions that you would like to ask of us, feel free to call upon us.

We hope that you will have a forward looking and progressive session of the General Assembly.

Sincerely yours,

| | |
|---|---|
| /s/ Wilmer Wilson | /s/ Milton Randolph, Sr. |
| Wilmer Wilson | Milton Randolph, Sr. |
| Vice President | President |
| /s/ William S. Thornton | /s/ Lola H. Hamilton |
| William S. Thornton | (Mrs.) Lola H. Hamilton |
| Board Chairman | Secretary |



(1)

Tuesday July 16, 1968

Alan Kiepper - we met at "Mr Dorset"; he was 10 minutes late! 8:40 AM

We discussed the Courts suggestion that we meet - he stated that he was having trouble with his legal staff and members of Council; the lawyers wanted to be a part of the negotiations.

I stated that this would not be feasible - we might get a playback in Court of statements made - where just the two are meeting, this could not be proved.

I said that Edwards would not negotiate and would be a deterrant.

Kiepper: You know the City's needs - we must balance the population, get land for industry etc. Would the County agree to negotiate?

Burnett: we might gamble a bit. We think we have a strong case but if we could settle for a small area, we might gamble this against the possibility of losing the entire 51 sq. mi.

K: What would suggest as to future meetings?

B: Possibly the next meeting, we could talk philosophy on how much or how far each could go. The next meeting could well be a meeting where each could bring a map with proposed lines. we still would have to try the case to decide the cost.

Px 32

N. Plaintiff's Exhibit 32 – Melvin W. Burnett Notes (8 pages).

(2)

K: This might be a reasonable approach.
How about next meeting -

Decided it would be best to call -
July 29th or 31st seem best time -
we parted at 9:15 Am.

This meeting was arranged on
July 15th in the afternoon.



(3)

July 29 - Kiepper called me - we set lunch
on 30th

7:30 - lunch at Va. Inn - both 15 min late.
Discussed need for negotiation in good faith.
He said City needed both people and land.
I stated County was forced to assume the
posture of a city because City did not
annex and did not give utilities on
economical basis to County.
Decided: County would give to City a map
showing what County would give voluntarily.
I stated we could possibly agree on
8.5 sq mi. and 18,500 people. City should
take this and try sincerely to merge
with Henrico.
He thought merger a good idea but area
too small but "put it on a map and
I'll see what I can do."

BEST COPY AVAILABLE

(4)

Monday August 5, 1968
Kiepper called in AM and set up meeting at my house at 5-5:30 pm
He arrived about 6:30 pm - ?

I gave him a County map with lines marked showing an area of 8.4 sq. mi. and 18,871 people. Showed where the industrial land was; area had 85-90% of sales tax in county; that only 5% of families were colored; etc.
He seemed to think this too small.
I told him the B. of S. might go a little farther but it would be hard to sell. Pointed out how nice it would be to settle on a line and not have to fight a vicious court battle - it would be better for us both.
He would see what his people said!

responsive to a request by I



(5)

Council time (3)

Monday August 12, 1968
Kiepper called in AM and set meeting at my house at 5:30 pm. He called at 6 pm said Council was holding him up - he arrived at 9:25 pm ??

He gave me a map showing City's request - 39.7 sq. mi. and 56,540 people
I told him that this was not negotiating in good faith that if this was the best the City could offer, then we were both wasting time.
He seemed to want to continue negotiations but stated the City had to have 50,000 people.
I said this was out of the question. If we had to give up this many, the Court would have to order it. He was adament in his demands.
(We bet $10.00 on land and 10.00 on people - that the city would not get 1/2 of what they asked for.)

He left at 10:30 pm - I said that I would call him if another meeting was needed - but that I did not think we would need another meeting - we were too far apart.
We parted friends!

(6)

Mon. Aug 19 I called - set appointment for Wed, Aug. 21st at 9 Am at DoNot
I arrived at 8:58 AM - he was there.
I stressed the need for continued negotiations - cited the problems of a hard court fight and the time + money saved if an agreement could be reached. But the County could not negotiate on 50,000 people. Couldn't the City reduce its requirements?
After much talk he agreed to ask his Council to agree on possibly down to 35,000 people. He realized advantages but the City was in pretty bad shape and needed to expand.
Agreed -

report to whom?

did you do this?

Mon Aug 26 - Kiepper called - City would need: People, Ind. land, vacant land in that order; City would negotiate further on a figure between 36,000 and 50,000. wants to see what the County proposes.

Fri. Aug 30 - I called him - arranged that he would call me at 6 pm - I would meet him at Kings for a few minutes - he called at 7 pm - too late. Check lunch tomorrow -



(7)

Sat. Aug 31 - We met at 12:30 at Schnatter's. Very pleasant -
I gave him map showing 21,358 people and said we could possibly find another 3000 or 3300 more. Again pointed out the divided feeling on the Board, that this was a hard-sell proposition, etc.
He said - City would never accept that few with present Council of lawyers. We had a frank discussion of things as they are. This is a hobby for Horace; 3 members of Council have not been told they'll pay the bill when the 3-judge court says to pay it; he is in a bad position - he would like to, but can't recommend suit be settled - majority of Council believes we will get most of what we ask for. If he recommends a lesser amount and pushes it thru, he will be branded a quitter. Horace is the bull - John D - would settle - David M. appears to be bullish but is inclined to settle. Horace feels certain he has the case won.

25M

What to do

I asked that City respond with a map showing what they would be willing to take. Pointed out that we had virtually offered 25,000, that he had agreed to come down to about 35,000 - we weren't so far apart

(8)

He said that he did not think Council would settle for 35,000.
I asked if by some magic we could agree on 30,000, would he recommend it. He's boxed in by Horace and council. He could go to full Council - it would be a 5:4 decision for or against.
He is going to give me a map next.

Sept. 12 Kepper called - said he had a map, he could bring it by home - I agreed.
He came about 7:45 pm., presented his map, stated we should keep trying to negotiate, tried to bring us up to 35,000 - his line had about 45,000.
I said that I did not think Bd. would ever agree. We talked for about 20 min.

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**Motion to Consider Consent Judgment, with Consent Judgment attached, filed May 15, 1973.**

[Caption omitted in printing]

Plaintiff, City of Richmond, moves the Court to consider the attached Consent Judgment, proposed by Plaintiff and the Department of Justice for Defendants the United States of America and Richard Kleindienst, and, for the reasons stated therein, to approve the same.

Respectfully submitted,

For the Plaintiff

/s/ By: Charles S. Rhyne
Charles S. Rhyne
Rhyne & Rhyne
400 Hill Building
839 - 17th Street, N. W.
Washington, D. C. 20006
Telephone: 202-347-7992

[Caption omitted in printing]

The undersigned parties, having stipulated and agreed that:

1. This Court has jurisdiction over this action pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973c.

2. Plaintiff is a political subdivision of the Commonwealth of Virginia with respect to which the provisions of said section are in effect.

3. The plaintiff's corporate boundaries were enlarged on January 1, 1970, by a decree of a special annexation court in Chesterfield County acting pursuant to the provisions of Title 15.1, Chapter 25 of the Code of Virginia of 1950, as amended. By virtue of said decree of the annexation court consisting of three circuit judges in accordance with the aforesaid annexation statutes, approximately 23 square miles of land area adjacent to the city, located in Chesterfield County, was added to the City of Richmond. The pre-annexation population of the city as of 1970 was 202,359 of which 104,207 were nonwhite and 98,152 were white persons. The annexation added to the City, according to the 1970 United States Census figures, 47,262 people, of which 1,557 were nonwhite and 45,705 were white persons. Under the existing method of elections, all nine of Richmond's City Council members are elected at large.

4. On the record herein, the decisions of this Court and the United States Supreme Court in *City of Petersburg v. United States,* are controlling.

5. On May 1, 1973, the City Council of Richmond duly adopted a plan for dividing the City, including the annexed area, into nine separate wards as shown and set forth in Exhibit A submitted herewith, contemplating that one member of the City Council is to be elected from each ward.

6. The City proposes that the Council shall be elected in the following manner:

A. Council shall be composed of nine members, one from each ward, who shall, at the time of filing



their notice of candidacy, be residents of the wards they seek to represent and qualified voters of the City and shall be elected by the qualified voters of such wards, respectively.

B. The candidate receiving the greatest number of votes in his ward shall be declared to be elected and shall serve for a term beginning on the first day of the calendar month following the election and expiring July 1, 1974, or until his successor has been elected and qualified.

C. The term of the present members of Council shall expire on the first day of the month following the date of a special election to be held

D. If any vacancies shall occur by death, resignation, removal from the ward, failure to qualify or for any other cause, Council shall elect a qualified person to fill the vacancy for the unexpired term.

E. The Constitution and laws of Virginia relating to the conduct of elections, as far as pertinent, shall apply *mutatis mutandis* to the conduct of this election.

F. The plan of election hereby stipulated is considered an interim plan for a special election of councilmen whose terms will expire July 1, 1974, which Council is to be given an opportunity to study and recommend to the General Assembly of Virginia at its session beginning the second Wednesday in January 1974 amendments to the charter of the City of Richmond relating to the election of the members of Council which will not be in conflict with the United States Constitution and the laws enacted pursuant thereto.

NOW, THEREFORE, upon consent of the undersigned parties, it is hereby

ADJUDGED, ORDERED and DECREED that judgment issue declaring that the annexation, as modified by the election plan proposed by the City of Richmond and stipulated by the parties as above set forth, does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

It is further ORDERED that this Court retain jurisdiction of this action to consider any additional matters which might arise and to enter such further orders as it may consider to be necessary.

ORDERED this day of May, 1973.

J. SKELLY WRIGHT
UNITED STATES CIRCUIT JUDGE

WILLIAM B. JONES
UNITED STATES DISTRICT JUDGE

JUNE L. GREEN
UNITED STATES DISTRICT JUDGE

The undersigned agree to the entry of this judgment.

FOR THE PLAINTIFF:

RHYNE & RHYNE

/s/ By Charles S. Rhyne

/s/ C. B. Mattox
CONARD B. MATTOX
City Attorney

/s/ John H.



FOR THE DEFENDANTS:

/s/ Gerald W. Jones
GERALD W. JONES

/s/ Sidney R. Bixler
SIDNEY R. BIXLER
Attorneys, Department of Justice

FOR THE DEFENDANT-INTERVENORS
CURTIS HOLT, SR., et al.:

VENABLE AND ALLEN

By

FOR THE DEFENDANT-INTERVENORS
CRUSADE FOR VOTERS OF RICHMOND:

ARENT, FOX, KINTNER, PLOTKIN & KAHN

By

**Transcript, exerpt from Hearing on July 23, 1973 Before Three-Judge District Court below, *City of Richmond* v. *United States, et al.*, pp. 8-9.**

[8] MR. RHYNE: . . . their plan, and we say that their plan – the Department of Justice certainly didn't have the purpose or effect of abridging or denying the right to vote of any citizen of the City of Richmond on account of race or color.

I realize there can't be a perfect plan, and I realize there is a lot of speculation, too, about the color of different people in different parts of this city, and I sincerely believe that having gone through the factual situation that I have outlined to you – Your Honor will remember you asked me the question and I had no opportunity to confer with my clients or anybody else – I told you quite honestly and sincerely, because I think that is what a lawyer should do, that I thought this case was governed by Petersburg, when you asked me the last time, when we were here on March 8.

From that time until now I think an enormous good-faith effort has gone on in the Department of Justice, among intervenors, and by the City of Richmond, to present to this Court what the remedy should be.

I think Your Honor has put your finger right on it: Is the Plan A that is attached to the proposed consent judgment, and which the Department of Justice is urging upon you, a fair, [9] reasonable – the best possible plan under all the circumstances?

JUDGE WRIGHT: You stated it right the last time, the best possible plan, reasonably possible.



It is conceded that there is a dilution of the black vote as a result of this annexation. There is no doubt about that.

So to compensate for that, there must be the best possible plan, reasonably possible plan.

Now, that is what the law is and that is what we must address ourselves to.

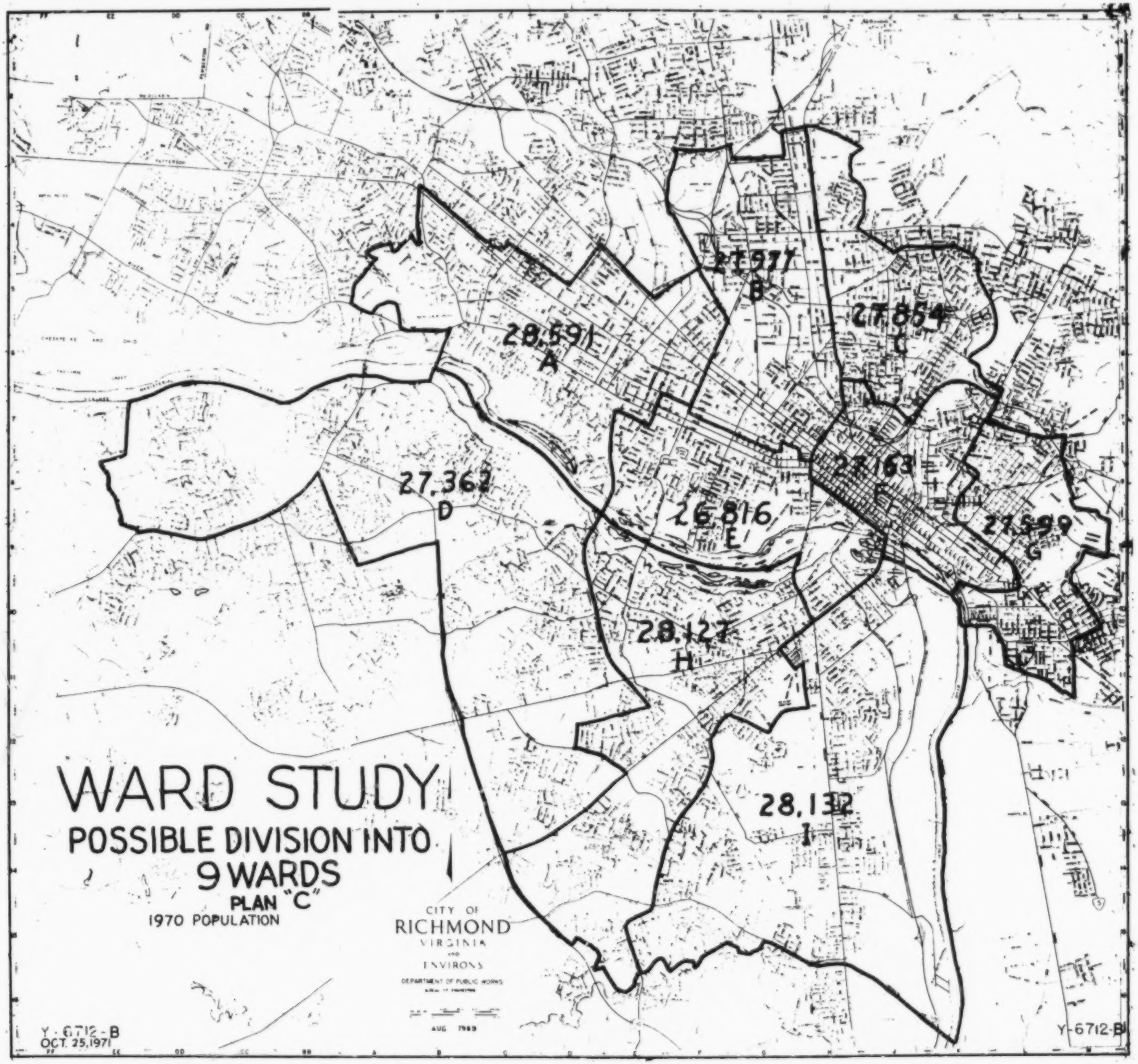
MR. RHYNE: That's right. I don't disagree with you one iota.

I suppose that I could go on and on stating the obvious, restating what I have already said, but it really comes right down there, Your Honor, we feel this is the best possible plan.

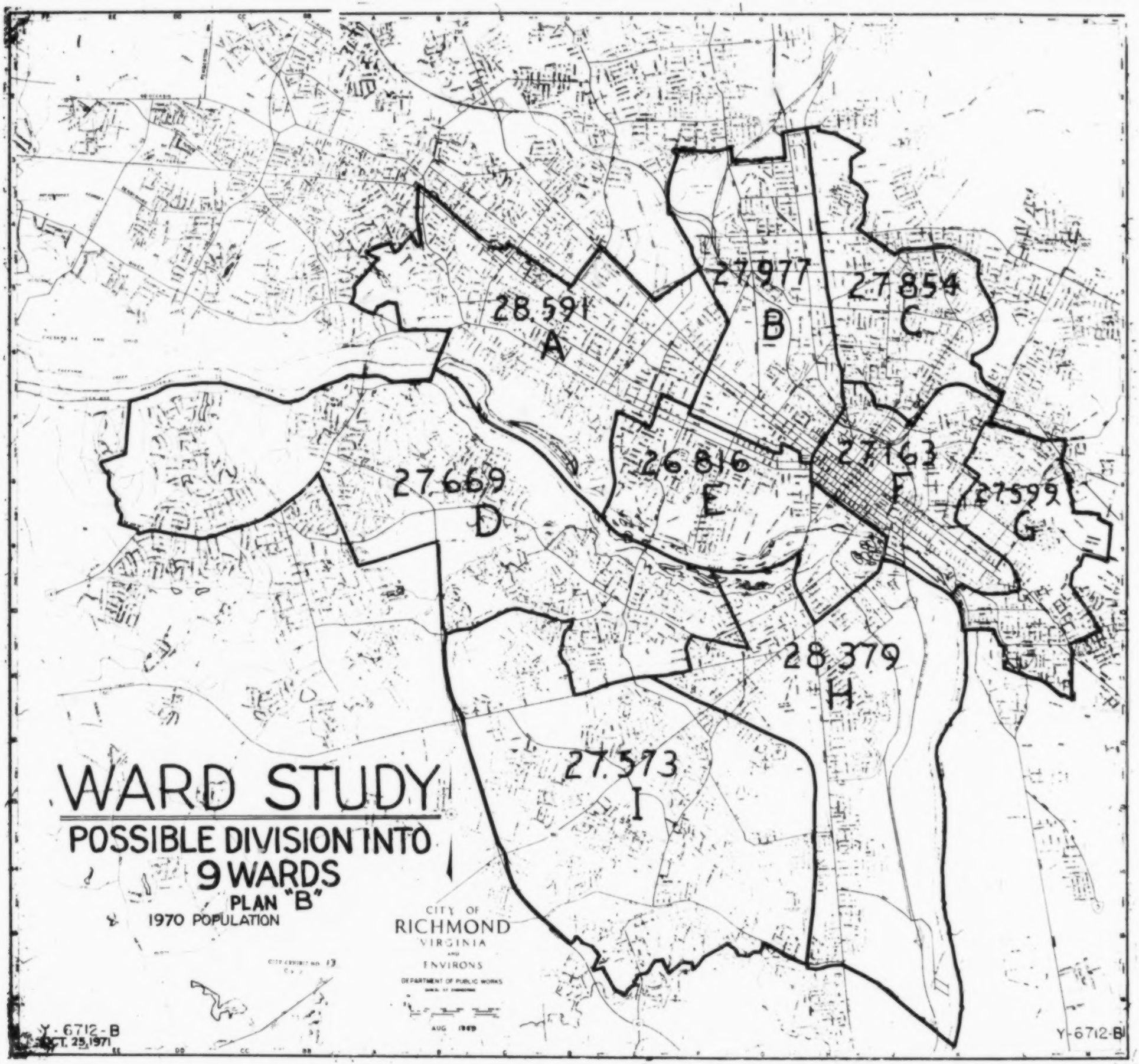
We feel that in the words of the Petersburg case – I think they used the word "neutralizes" to the best possible extent any dilution, and I think that that applies here and I think that actually insofar as we are concerned, we rely upon the expertise of the Department of Justice that has – they might not like my characterization of it – by statute been made the experts in this kind of thing.

So we urge you to approve it. We feel again that it is – well, I say it is the best possible plan.

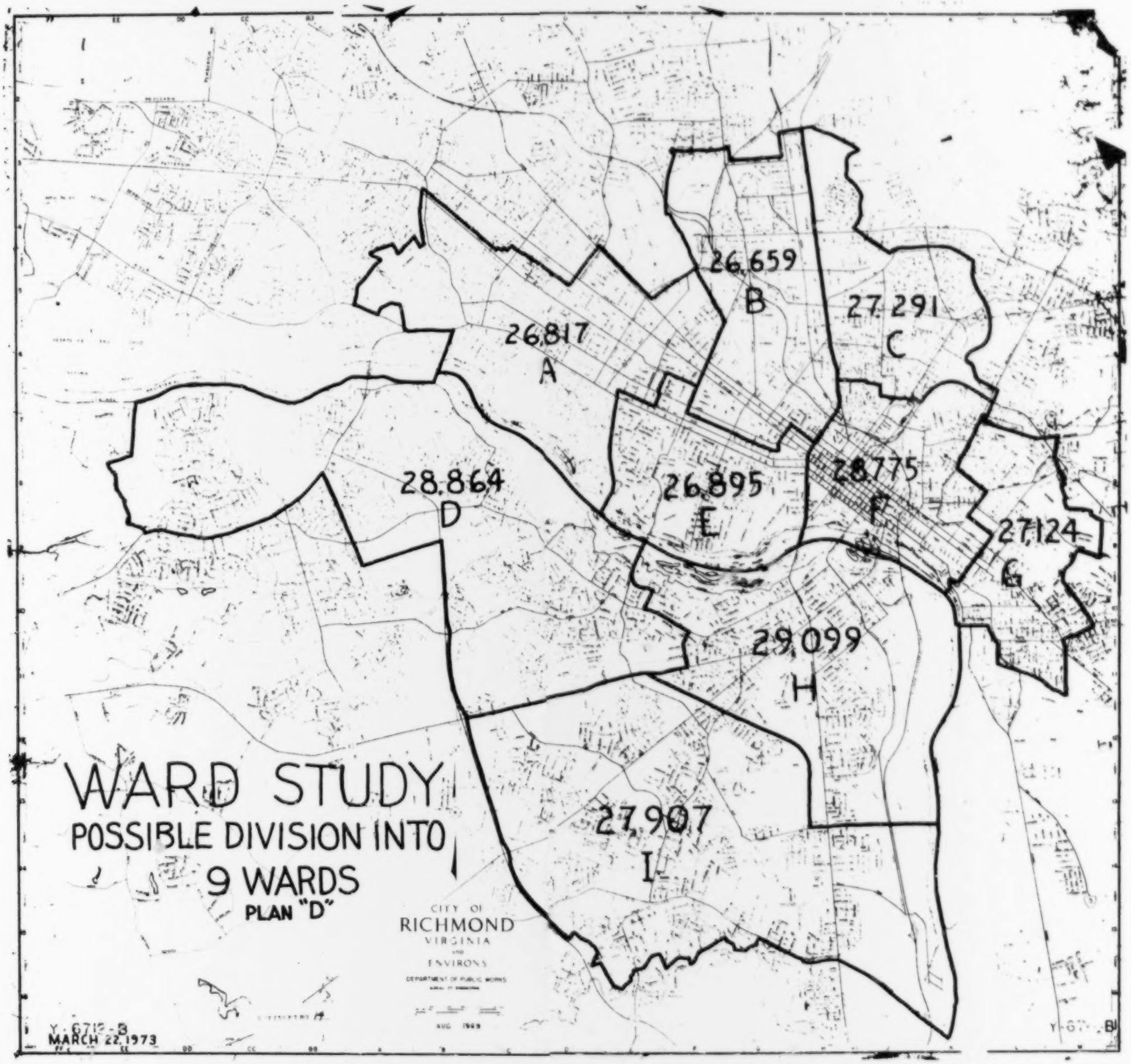
**Exhibits From the Hearing Before the Special Master, appointed by the Court below,** *City of Richmond* **v.** *United States, et al.*



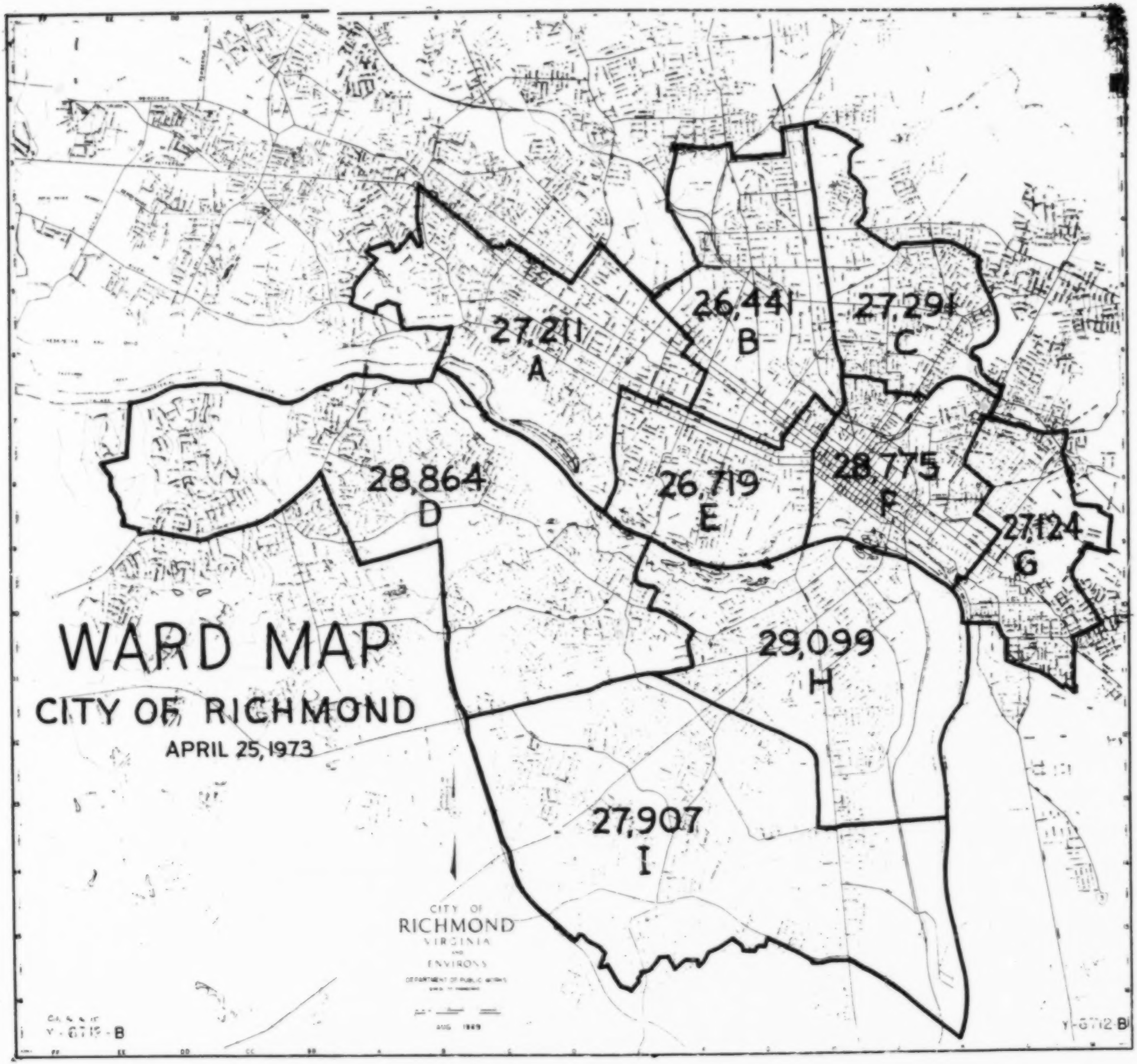

A. Plaintiff's Exhibit 12 – Plan C, Nine-ward Plan Map.




B. Haintiff's Exhibit 13 — Plan B, Nine-ward Plan Map.




C. Plaintiff's Exhibit 14 – Plan D, Nine-ward Plan Map.




D. Plaintiff's Exhibit 15 – Nine-ward Plan.

City Exhibit No. 18.

City of Richmond vs. United States of America

TABLE ____
REVISED DEMOGRAPHIC CHARACTERISTICS OF
WARD MAP - CITY OF RICHMOND
April 25, 1973

| Ward | Total Population | Non-Black | Percent | Black | Percent |
|---|---|---|---|---|---|
| A | 27,085 | 26,556 | 98.0 | 529 | 2.0 |
| B | 26,442 | 22,190 | 83.9 | 4,252 | 16.1 |
| C | 27,117 | 7,149 | 26.4 | 19,968 | 73.6 |
| D | 28,864 | 28,525 | 98.8 | 339 | 1.2 |
| E | 26,803 | 9,476 | 35.4 | 17,327 | 64.6 |
| F | 28,990 | 3,227 | 11.1 | 25,763 | 88.9 |
| G | 27,124 | 3,832 | 14.1 | 23,292 | 85.9 |
| H | 29,099 | 17,204 | 59.1 | 11,895 | 40.9 |
| I | 27,907 | 26,506 | 95.0 | 1,401 | 5.0 |

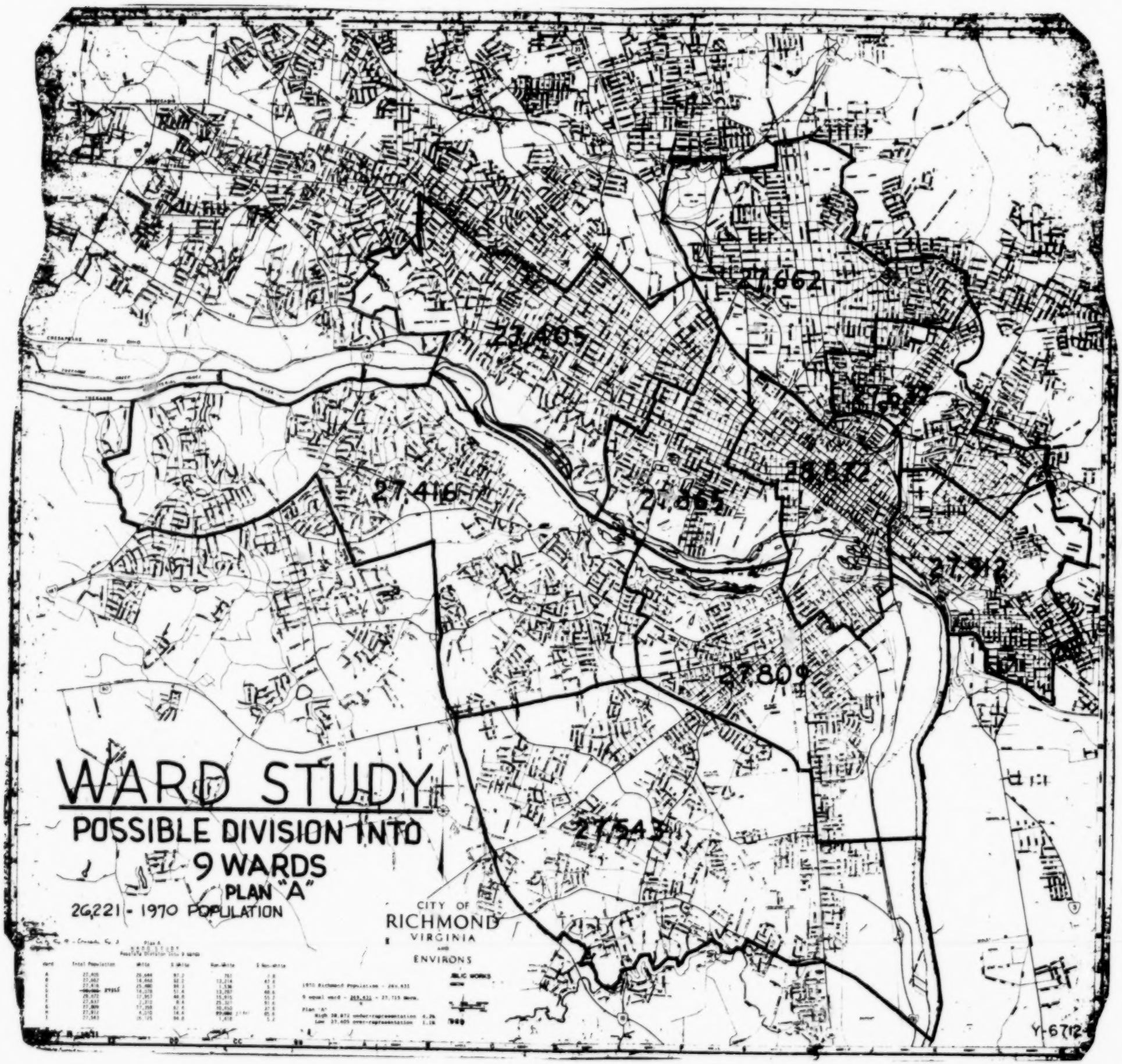
Norm $\frac{249,431}{9} = 27,715$

Over Representation = 26,442 = -4.6%
Under Representation = 29,099 = +5.0%

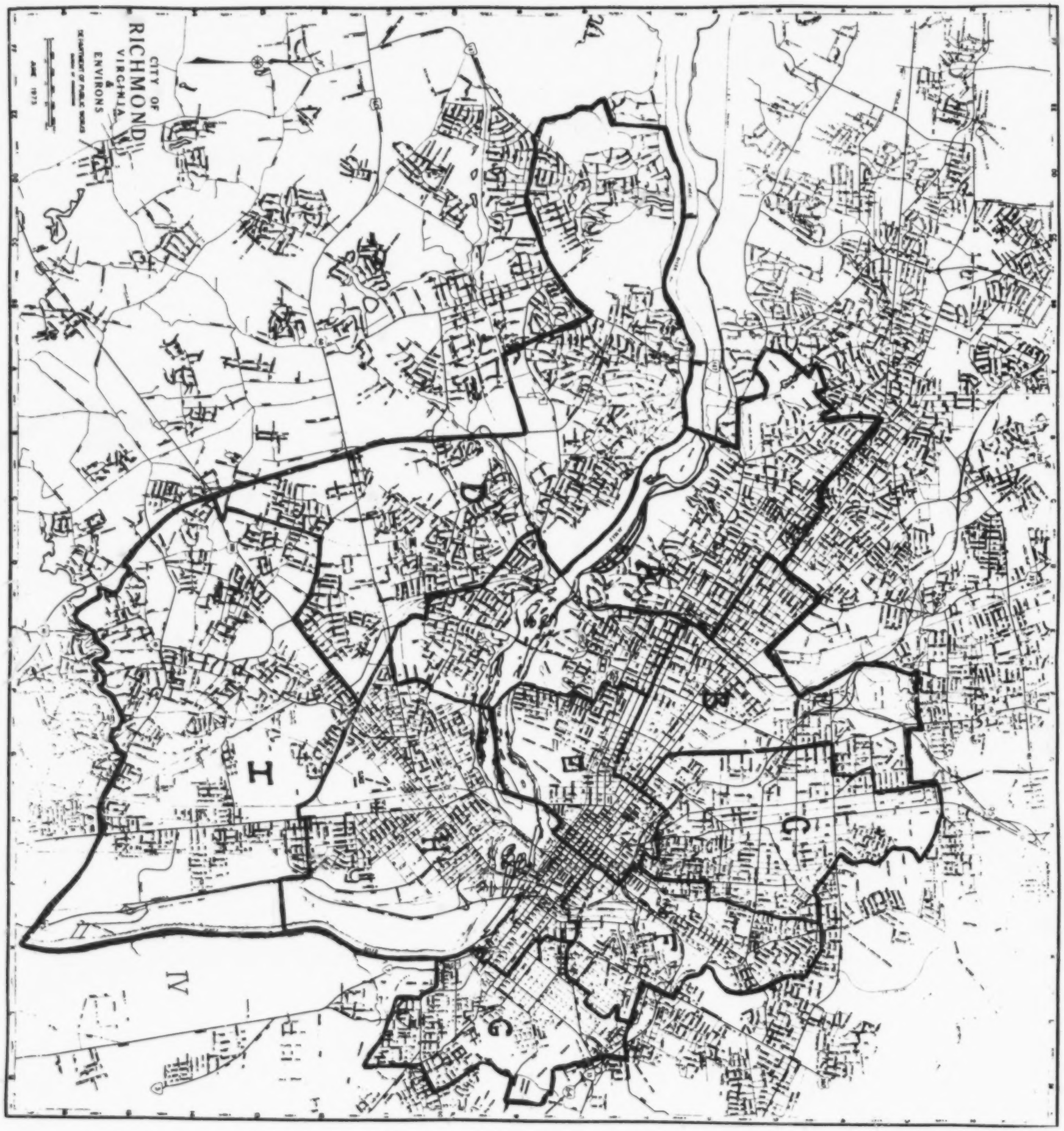
Source: Population Data - U.S. Department of Commerce,
Bureau of Census
Publications - PHC(1)-73 and HC(3)-257

August 20, 1973

**E. Plaintiff's Exhibit 18 – Demographic Characteristics, accompanying Exhibit 15.**




F. Crusade for Voters Exhibit 3 — Plan A.
Nine-ward Plan Map.




MAP IV (Crusade Intervenors' Exhibit Q)

| WARD | TOTAL POP. | WHITE & OTHER | % WHITE & OTHER | BLACK | % BLACKS |
|---|---|---|---|---|---|
| A | 27,912 | 25,455 | 91.20 | 2,457 | 8.80 |
| B | 28,399 | 28,133 | 99.06 | 266 | .94 |
| C | 28,306 | 9,155 | 32.34 | 19,151 | 67.66 |
| D | 27,572 | 27,049 | 98.10 | 523 | 1.90 |
| E | 27,712 | 7,538 | 27.20 | 20,174 | 72.80 |
| F | 27,007 | 4,914 | 18.20 | 22,093 | 81.80 |
| G | 27,913 | 3,824 | 14.10 | 23,289 | 85.90 |
| H | 27,933 | 12,199 | 43.67 | 15,734 | 56.33 |
| I | 27,524 | 26,155 | 95.03 | 1,369 | 4.97 |

Maximum Deviation 5.02%

N.B. There are two minor errors in Maps IV and V that have not as yet been corrected.

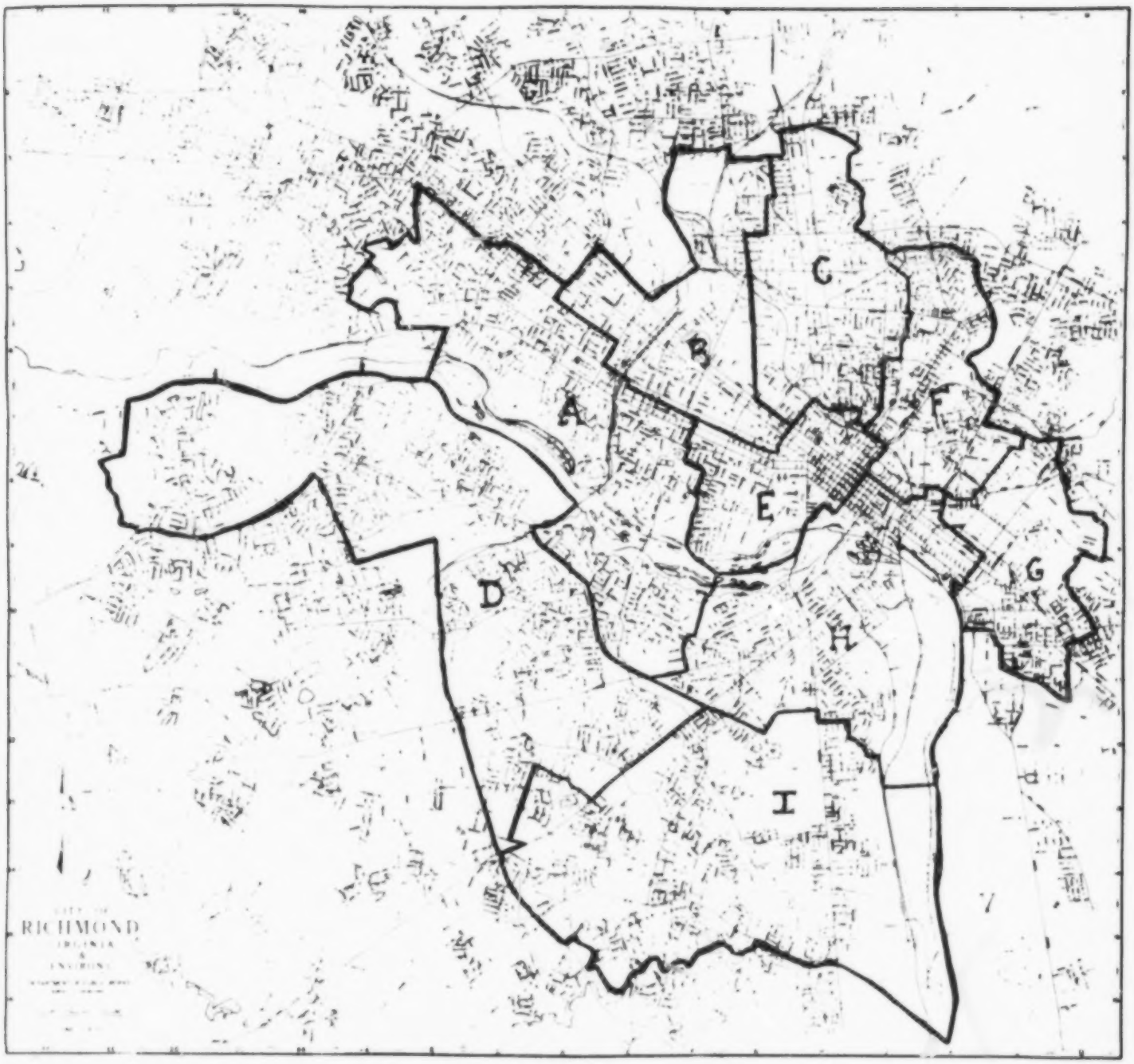
a) The total population in Plans IV and V is 249,678 which is 47 more than the population as published in 1970 Census data.

b) The total white and black populations for Plans IV and V is 144,422 and 105,056 respectively. The total white population is 233 less than the 1970 Census figure, and the total black population is 290 greater than the 1970 Census figure.

## G. Crusade for Voters Exhibit 20 – Plan Q, Nine-ward Plan Map.

CRUSADE FOR VOTERS EX Q - (WARD)

CRUSADE FOR VOTERS EX R (4 of 4)




H Crusade for Voters Exhibit 21 Plan R.
Nine-ward Plan Map

MAP V (Crusade Intervenors' Exhibit R)

| WARD | TOTAL POP | WHITE & OTHER | % WHITE & OTHER | BLACK | % BLACKS |
|---|---|---|---|---|---|
| A | 27,114 | 25,257 | 91.13 | 2,457 | 8.87 |
| B | 28,190 | 27,928 | 99.07 | 262 | .93 |
| C | 27,979 | 10,100 | 36.10 | 17,879 | 63.90 |
| D | 27,730 | 27,105 | 97.75 | 625 | 2.25 |
| E | 27,713 | 7,538 | 27.20 | 20,174 | 72.80 |
| F | 27,460 | 4,956 | 18.05 | 22,508 | 81.95 |
| G | 27,276 | 3,820 | 14.03 | 23,456 | 85.97 |
| H | 27,851 | 11,417 | 40.98 | 16,444 | 59.02 |
| I | 27,690 | 26,301 | 95.27 | 1,305 | 4.73 |

Maximum Deviation = 1.47

There are two minor errors in Maps IV and V that have not as yet been corrected.

a) The total population in Plans IV and V is 249,478 which is 47 more than the population as published in 1970 Census data.

b) The total white and black populations for Plans IV and V is 144,422 and 105,056 respectively. The total white population is 233 less than the 1970 Census figure and the total black population is 290 greater than the 1970 Census figure.

**I. Defendant United States Exhibits 1 through 11.**

**Exhibit 1, Letter from David L. Norman to C.B. Mattox, Jr., May 7, 1971**

May 7, 1971

Mr. C. B. Mattox, Jr.
City Attorney
Department of Law
402 City Hall
Richmond, Virginia 23219

Dear Mr. Mattox:

As you know, the Supreme Court recently held in *Perking* v. *Mathews,* 400 U.S. 379, 388-89 (1971), that "[c]hanging boundary lines by annexations which enlarge the city's number of eligible voters . . . constitutes the change of a 'standard, practice, or procedure with respect to voting' " within the meaning of section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. This letter concerns your submission of a 1969 annexation to the city of Richmond.

Municipal annexations are, of course, commonly undertaken for a variety of reasons and affect a number of areas of concern to local governments. Section 5 is not addressed to annexations per se, but the Attorney General is obliged under section 5 to be concerned with the voting changes produced by an annexation. In the present instance, the city of Richmond elects representatives to its governing body on an at-large basis; its population is approximately evenly divided between whites and blacks. The submitted change would increase

the city's population by approximately 43000 new residents of whom a very small minority is Negro. In the circumstances of Richmond, where representatives are elected at large, substantially increasing the number of eligible white voters inevitably tends to dilute the voting strength of black voters. Accordingly The Attorney General must interpose an objection to the voting change which results from the annexation.

You may, of course, wish to consider means of accomplishing annexation which would avoid producing an impermissible adverse racial impact on voting, including such techniques as single-member districts. See *Chavis* v. *Whitcomb,* 305 F. Supp. 1364 (S.D. Ind. 1969). Moreover, section 5 permits seeking approval of voting changes by the United States District Court for the District of Columbia irrespective of any previous submission to the Attorney General.

Sincerely,

DAVID L. NORMAN
Acting Assistant Attorney General
Civil Rights Division

**EXHIBIT 1**



**Exhibit 2, Letter from David L. Norman to C.B. Mattox, Jr., September 30, 1971.**

September 30, 1971

Mr. C. B. Mattox, Jr.
City Attorney
Department of Law
402 City Hall
Richmond, Virginia 23219

Dear Mr. Mattox:

This is in response to your resubmission on August 2, 1971, of the 1969 annexation to the City of Richmond for reconsideration pursuant to Section 5 of the Voting Rights Act. An objection was interposed to the initial submission to my letter of May 7, 1971.

We have reviewed and considered the additional information you furnished, as well as the comments and views expressed by yourself and Mr. Lewis F. Powell, Jr., who submitted a memorandum in support of the resubmitted change, and the recent findings announced by Judge Merhige in pending litigation involving this annexation. While we found this additional material both relevant and useful, we find no basis for withdrawing our objection.

Although, as you point out, the intervening decision of the Supreme Court in *Whitcomb* v. *Chavis,* 403 U.S. 124, did recognize that multi-member legislative districts are not unconstitutional *per se,* we do not believe that opinion is dispositive of issues raised by the Richmond annexation. In our view, considering all the available facts

and circumstances, the annexation of a large, almost exclusively white area does have a discriminatory racial effect on voting in the context of an emerging black majority electorate, at-large council elections, and evidence of racial purpose an effect introduced in a federal court proceeding. It is therefore objectionable under Section 5 of the Voting Rights Act.

We would like to reiterate our view that the objection of the Attorney General under the Voting Rights Act relates only to voting and election aspects of a proposed change and, therefore, need not necessarily invalidate this entire annexation. Thus, as we have suggested before, one means of minimizing the racial effect of the annexation and still allowing for the city's growth and expansion would be to adopt a system of single-member, non-racially drawn councilmanic districts in place of at-large voting. Should this or any other change be enacted and submitted to the Attorney General, we will make every effort to give it prompt consideration.

Sincerely,

DAVID L. NORMAN
Assistant Attorney General
Civil Rights Division

EXHIBIT 2

1966
RICHMOND
COUNCILMANIC
ELECTION

170

1
5

Richmond Voting by Precincts

Council

4-Year Terms

Five Virginians Get Fellowships

Norfolk Youth Dies Of Car Injuries

New Currency

Exhibit 3, 1966 Richmond Councilmanic Elections, "Voting by Precincts".

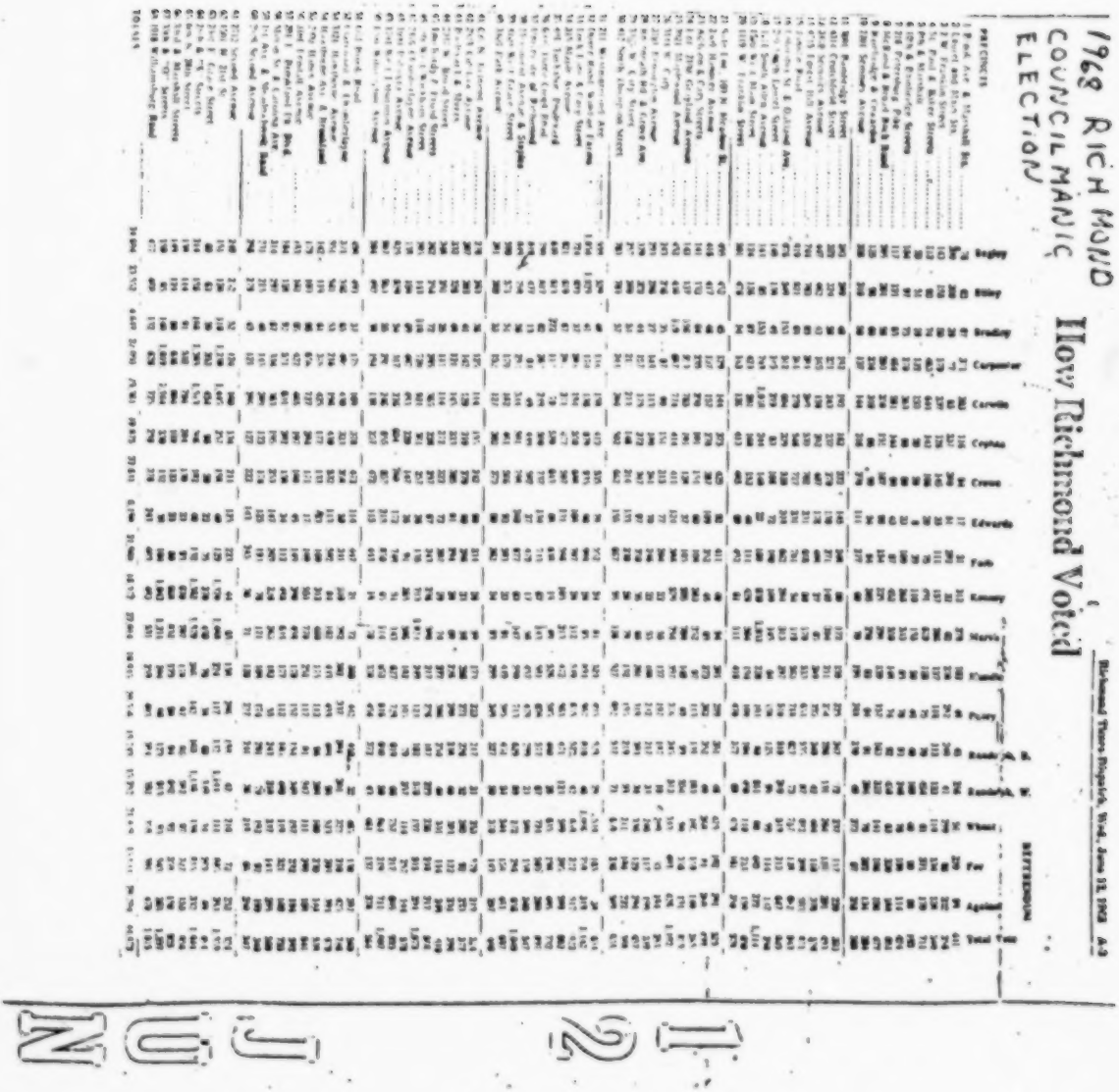



**Exhibit 4, 1968 Richmond Councilmanic Elections, "How Richmond Voted".**

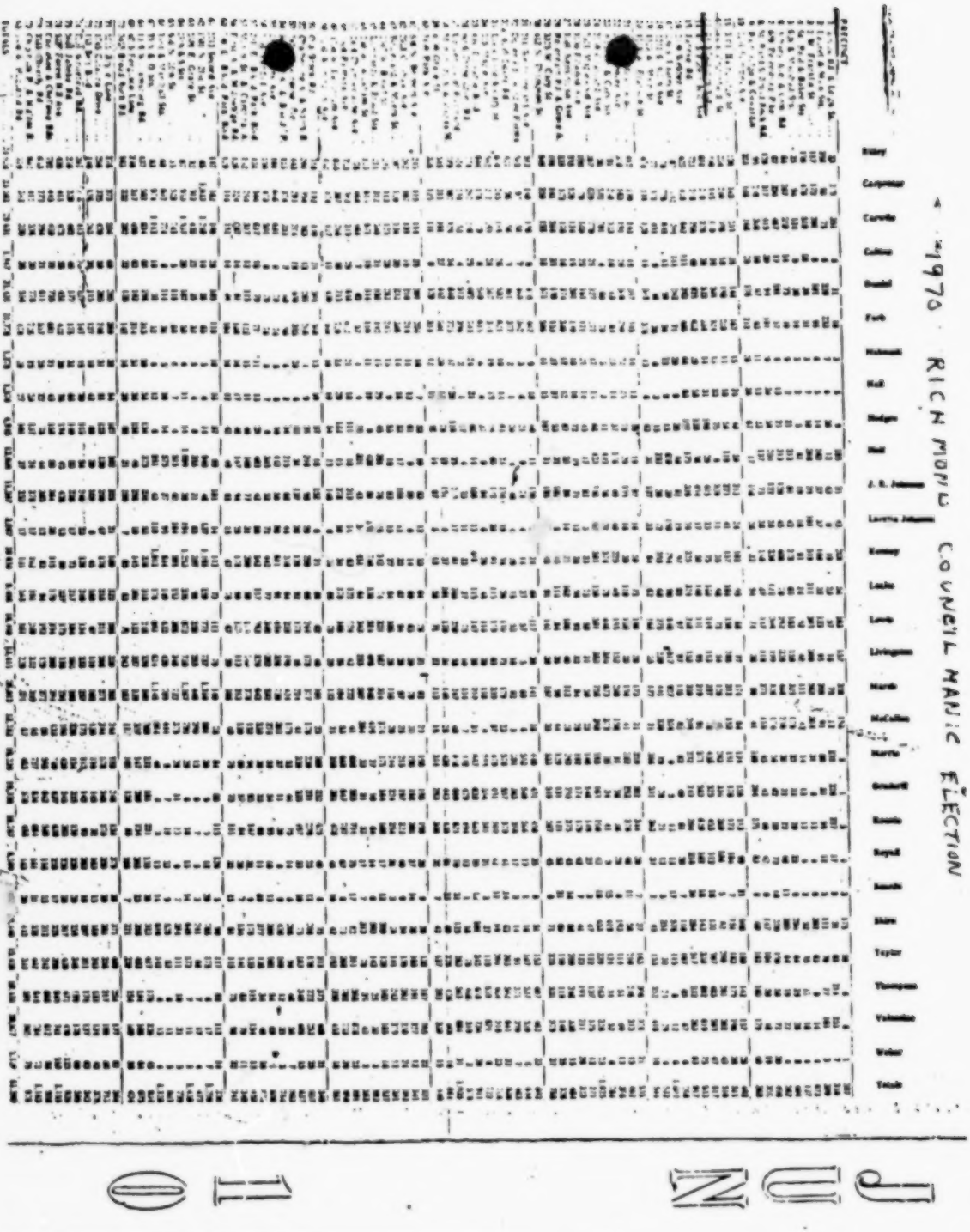



**Exhibit 5, 1970 Richmond Councilmanic Elections**

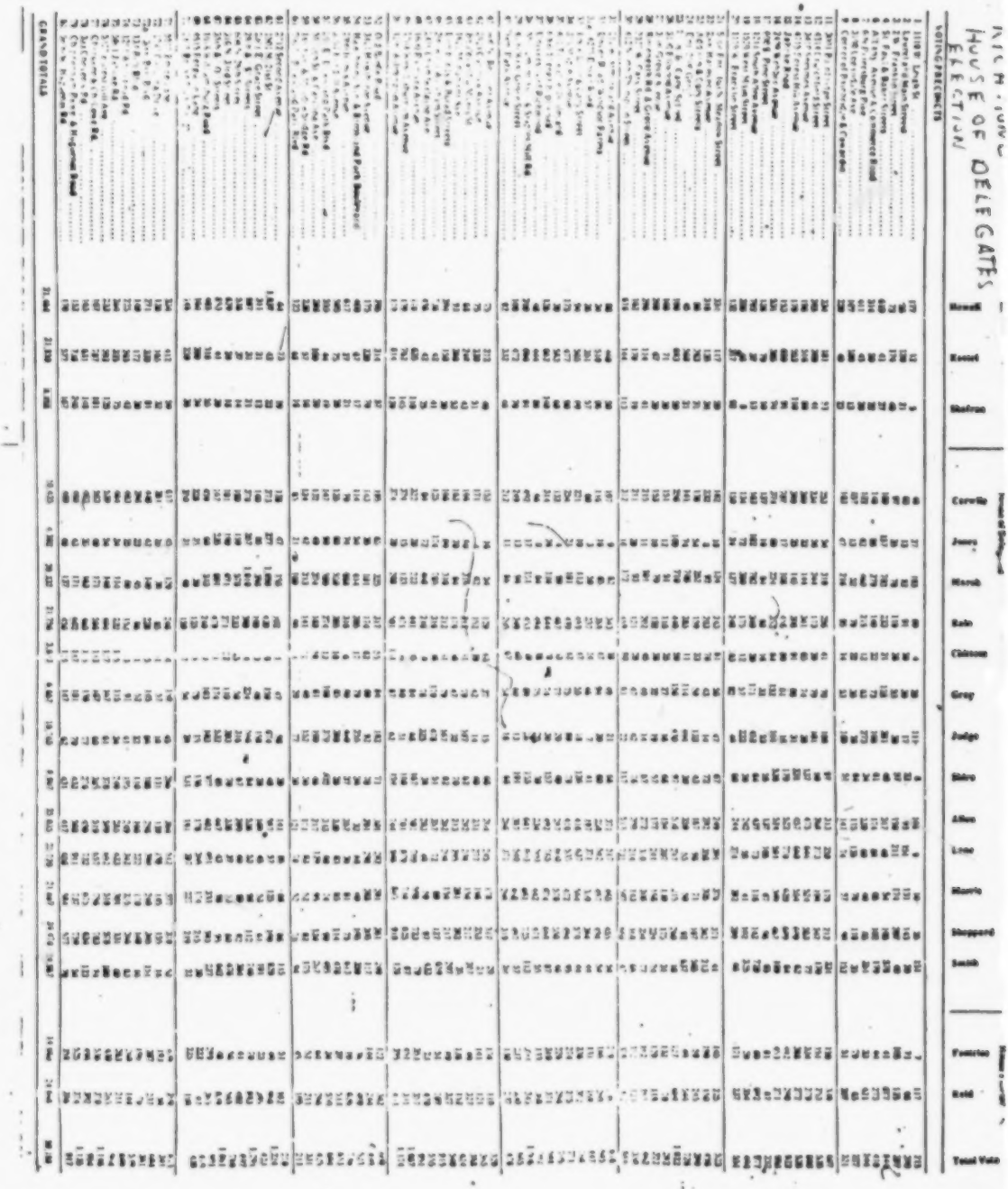


**Exhibit 6, 1971 Richmond House of Delegates Election.**

# 1966 RICHMOND COUNCILMANIC ELECTION

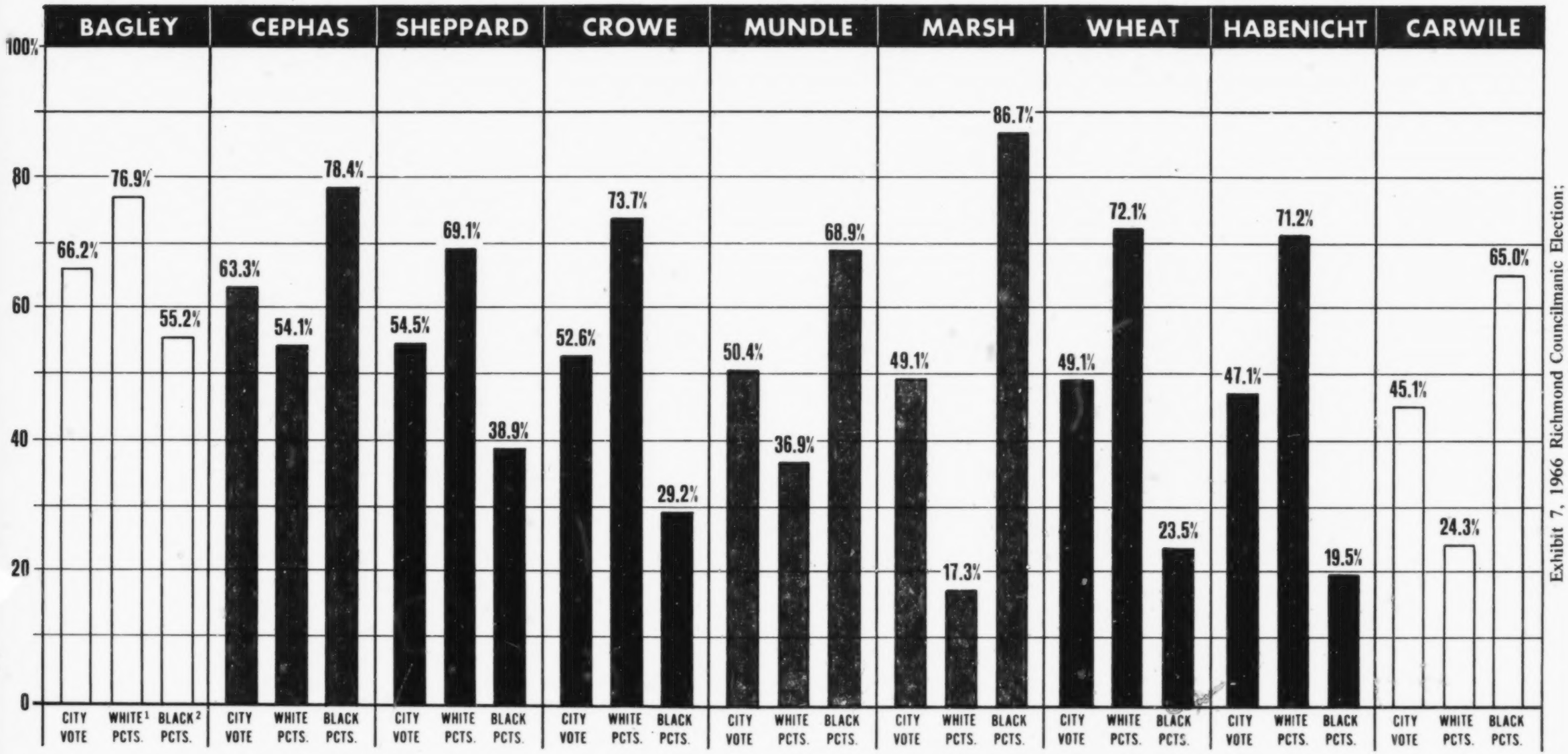
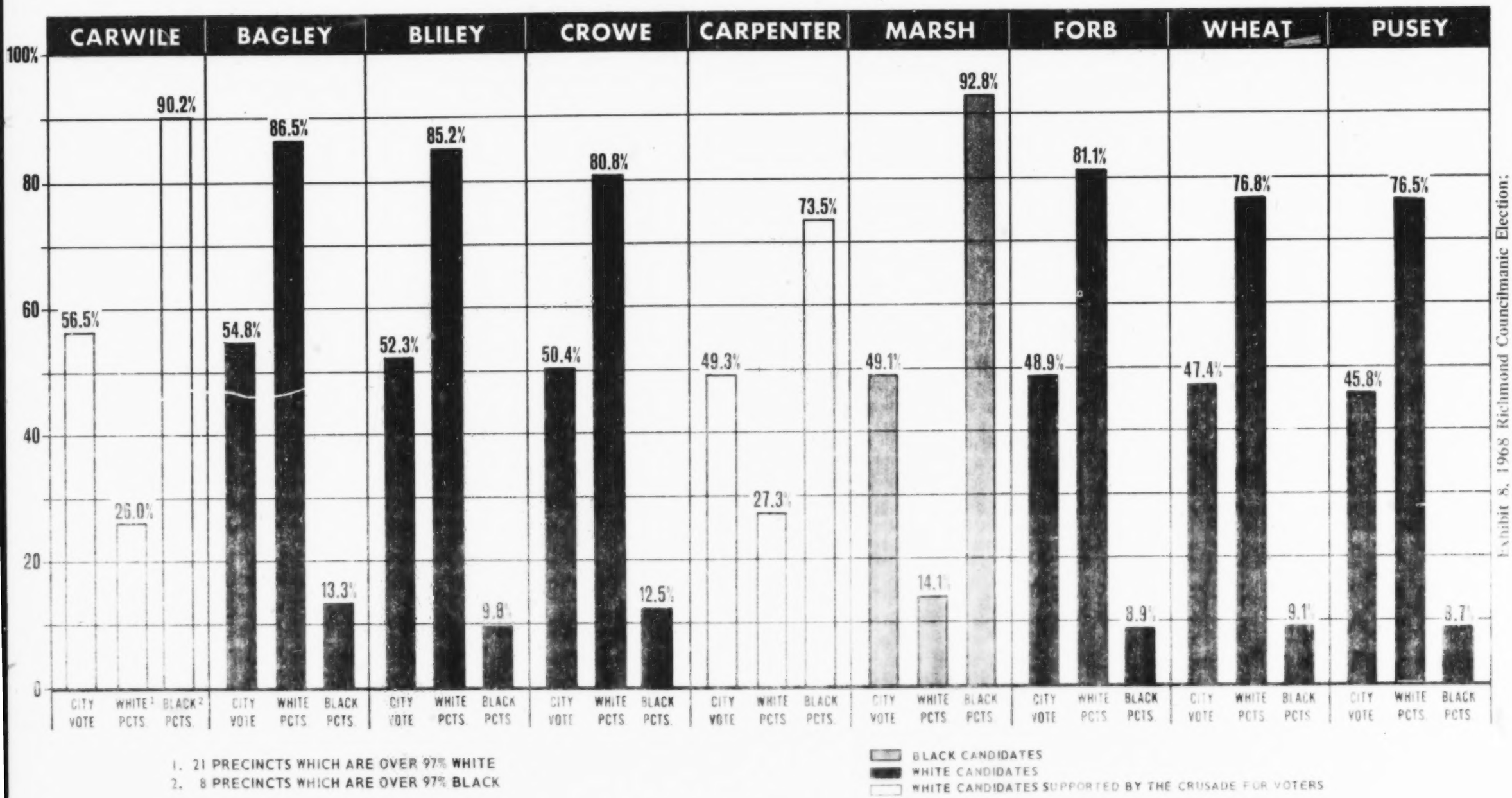



Exhibit 7, 1966 Richmond Councilmanic Election; percentage by candidate, white and black precincts.

# 1968 RICHMOND COUNCILMANIC ELECTION




1. 21 PRECINCTS WHICH ARE OVER 97% WHITE
2. 8 PRECINCTS WHICH ARE OVER 97% BLACK

BLACK CANDIDATES
WHITE CANDIDATES
WHITE CANDIDATES SUPPORTED BY THE CRUSADE FOR VOTERS

Exhibit 8. 1968 Richmond Councilmanic Election; percentage by candidate, white and black precincts.

# 1970 RICHMOND COUNCILMANIC ELECTION

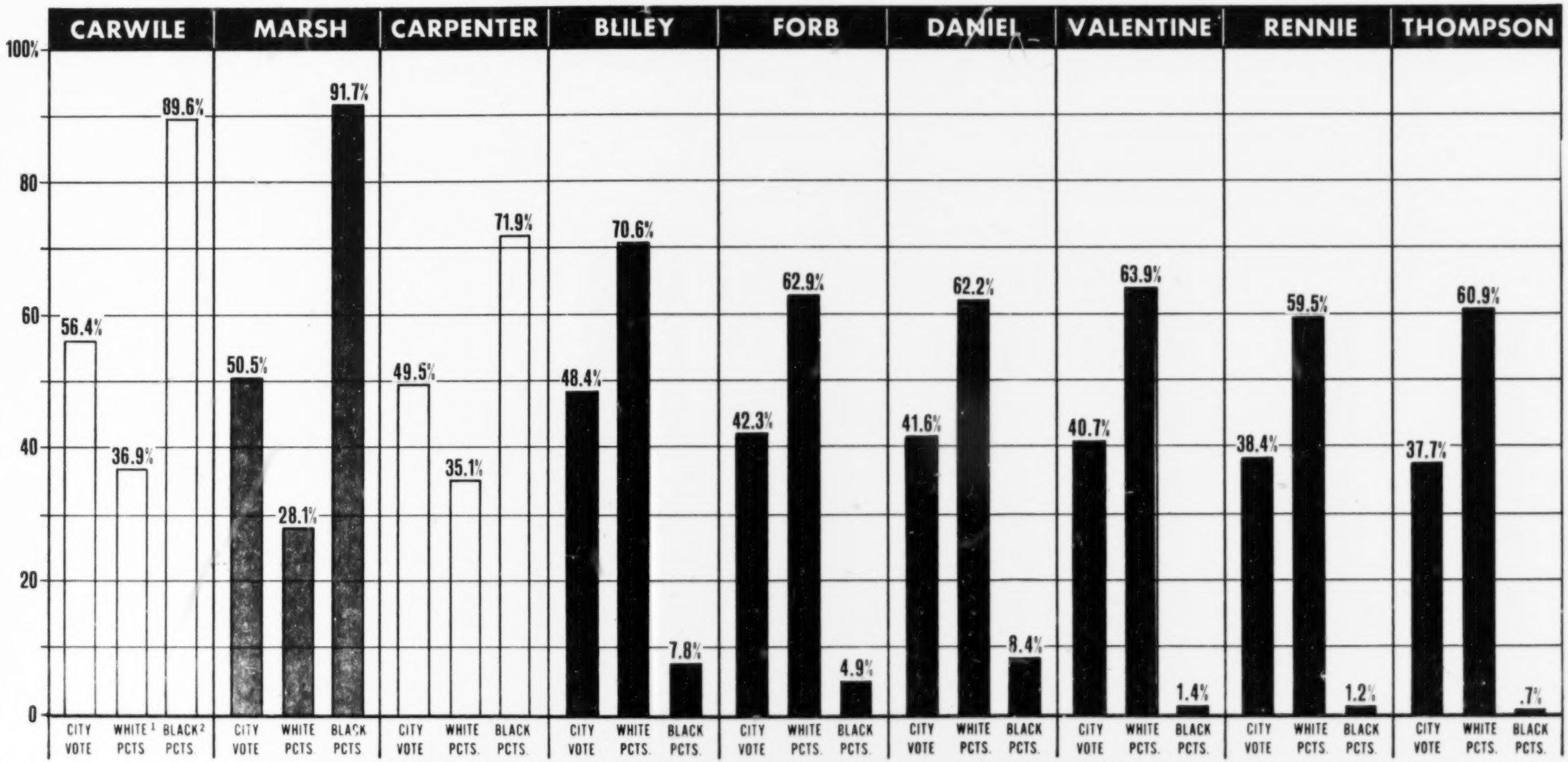



Exhibit 9, 1970 Richmond Councilmanic Election; percentage by candidate, white and black precincts.

1. 32 PRECINCTS WHICH ARE OVER 97% WHITE
2. 8 PRECINCTS WHICH ARE OVER 97% BLACK

BLACK CANDIDATES
WHITE CANDIDATES
WHITE CANDIDATES SUPPORTED BY THE CRUSADE FOR VOTERS

# 1971 RICHMOND HOUSE OF DELEGATES ELECTION

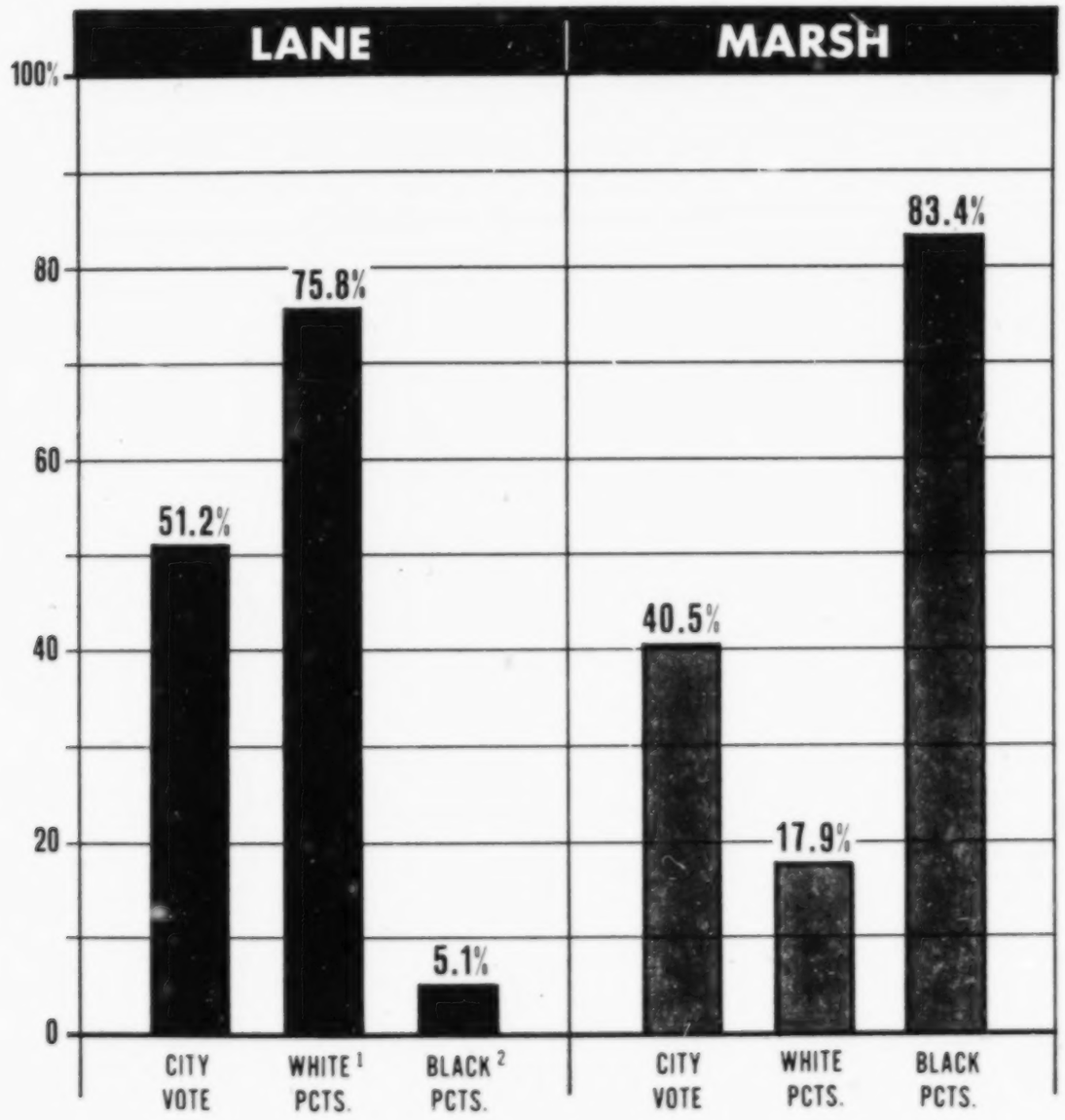



Exhibit 10, 1971 Richmond House of Delegates Election: percentage by candidate, white and black precincts.

## Exhibit 11, 1966 through 1970 Elections; white and black precincts breakdown.

| Precincts | Total votes cast for highest black candidate | % of votes cast for highest black candidate | Total votes cast for highest white candidate not[1] supported by CFV | % of votes for highest white candidate not supported by CFV | Total votes Cast |
|---|---|---|---|---|---|
| **1966 COUNCILMANIC GENERAL ELECTIONS** | | | | | |
| Black Precincts[2] | 5,532 | 78.4% | 2,743 | 38.9% | 7,060 |
| White Precincts[3] | 5,922 | 54.1% | 7,578 | 69.1% | 10,956 |
| **1968 COUNCILMANIC GENERAL ELECTIONS** | | | | | |
| Black Precincts | 7,937 | 92.8% | 1,141 | 13.3% | 8,549 |
| White Precincts | 2,009 | 14.1% | 12,297 | 86.5% | 14,219 |
| **1970 COUNCILMANIC GENERAL ELECTIONS** | | | | | |
| Black Precincts | 7,145 | 91.7% | 611 | 7.8% | 7,790 |
| White Precincts | 5,987 | 28.1% | 15,065 | 70.6% | 21,337 |
| **1971 HOUSE OF DELEGATES ELECTION** | | | | | |
| Black Precincts | 5,918 | 83.4% | 360 | 5.1% | 7,089 |
| White Precincts | 3,995 | 17.9% | 16,944 | 75.8% | 22,339 |

[1] Some white candidates were supported by the predominately Black Crusade for Voters. They therefore had support in both black and white wards, and finished ahead of other white candidates. Their voting record is as follows:

[2] 8 precincts which are more than 97% black.

[3] 21 precincts which are more than 97% white.
(32 precincts in 1970 election)

**1966 COUNCILMANIC GENERAL ELECTIONS**

| | Total votes Cast for Carwile | % of votes | Total votes Cast for Carpenter | % of votes | Total votes Cast for Bagley | % of votes | Total votes cast |
|---|---|---|---|---|---|---|---|
| Black Precincts | 4,588 | 65.0% | * | | 3,896 | 55.2% | 7,060 |
| White Precincts | 2,660 | 24.3% | * | | 8,420 | 76.9% | 10,956 |

**1968 COUNCILMANIC GENERAL ELECTIONS**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Black Precincts | 7,715 | 90.2% | 6,284 | 73.5% | ** | | 8,549 |
| White Precincts | 3,701 | 26.0% | 3,877 | 27.3% | ** | | 14,219 |

**1970 COUNCILMANIC GENERAL ELECTIONS**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Black Precincts | 6,982 | 89.6% | 5,602 | 71.9% | * | | 7,790 |
| White Precincts | 7,879 | 36.9% | 7,484 | 35.1% | * | | 21,337 |

*Not a candidate in this election.

**Did not receive Crusade of Voters support in this election.

# Bliley Foresees Eventual Choice In Voting Here

Mayor Thomas J. Bliley Jr. told the Richmond-FirstClub yesterday that the organization could help force a referendum, if one is needed in the future, to let city residents decide how they want councilmen men elected.

Bliley was looking to 1975 or later, following the expiration of the 1965 Voting Rights Act, which requires federal approval of any voting law changes in Southern states.

A nine-ward system, he indicated, could be used temporarily if it is ordered by federal authorities as a remedy for the dilution of black voting strength, which annexation opponents say resulted from the 1970 annexation.

**First Ask**

Speaking at Hotel John Marshall, Bliley said that citizens should first ask the City Council then in office to call for a referendum on the method of electing councilmen. If council does not call for a referendum, the Richmond-First Club and other groups could force a referendum by petition to the General Assembly, Bliley said.

"Reconstruction law, modern version," in the form of the Voting Rights Act, is part of the present city problem, Bliley said. He traced the history of city boundary expansion problems to the present situation, with the city having submitted to the Justice Department ward plans that would have councilmen elected from individual districts, rather than by at-large voting, the present system.

Bliley rapped Raymond H. Boone, editor of the Richmond Afro-American newspaper, for a recent front-page editorial that was critical of the recent Team of Progress effort to form a black-white coalition as an alternative to de-annexation or a ward system.

If the Richmond Crusade for Voters, a predominantly black political group, had backed the coalition, "we were prepared to sell it — we could have sold it" for the election of five whites and four blacks to City Council,

J. Holt Exhibit 1 – News Clippings.

Holt Ex. 1 (a)

Bliley said. But, he said, Boone's editorial was "shooting from the hip—this kind of statement is bad for the city."

Turning again to the federal laws that are causing city problems, Bliley said, "I fervently hope that the Votings Rights Act will expire — I pledge that I will do all in my power to force a referendum to see that the people of the city get the kind of government they want."

"Government by consent of the governed — this is what we want," Bliley said. Vice Mayor Henry L. Marsh III, as a representative of the black community, recently refused to accept a 5-4 voting plan offered by Bliley and other Team of Progress leaders. Marsh, said Bliley, wanted a plan to assure the election of five blacks and four whites.

Under a nine-ward plan, Bliley predicts a "log-rolling tug of war" over capital improvements for various wards. Urban renewal plans such as Washington Park, Randolph and Fulton might never have been voted the millions needed under a nine-ward plan, Bliley said.

Also yesterday, City Atty. Conard B. Mattox Jr. notified W. H. C. Venable, counsel for Curtis Holt Sr., an intervenor in the Washington litigation, and James W. Benton Jr., counsel for the Richmond Crusade for Voters, that he has delivered to the Justice Department copies of the ward plans.

Richmond Times-Dispatch, Thurs., April 26, 1973

# City Gets 9-Ward Plan For Council Election

By James E. Davis

The Justice Department approved yesterday a nine-ward system to be used for electing City Council members.

Mayor Thomas J. Bliley Jr. made public the federal approval at a council budget meeting last night.

*Related Map, B-5*

Bliley called for action at a concil meeting at 7 p.m. Tuesday to authorize city Atty. Conard B. Mattox Jr. to ask the U. S. District Court of the District of Columbia to order the adoption of the nine-ward plan.

The plan is basically the same as published earlier in The Times-Dispatch. There would be six wards north of the James River and three south of the river. The population in the nine wards would range from 26,441 to 29,099, figures that Mattox said in response to a question from Councilman James G. Carpenter would be within legal limits.

"A majority of the present council earlier had indicated it favors a nine-ward system if the system can bring approval by federal authorities of the 1970 annexation and ward off deannexation efforts.

Richmond has been trying since 1971 to win Justice Department approval for the 1970 annexation of about 47,000 Chesterfield County residents, most of them white. Federal approval of annexation as a voting law change is required by the 1965 Voting Rights Act.

Mayor Bliley said he is "very pleased the city has received an accommodation with the Justice Department—I am not happy we have to do this (go to a nine-ward system), but this is what we have to do.

'I hope the act (1965 Voting Rights Act) will expire in 1975 and Richmond citizens can have a referendum to decide how they want councilmen elected.

In 1947, Richmonders voted to begin the present system of electing all nine councilmen at large, a method used through the June 1970 election. But there has been no election since 1970. The regular two-year terms of all nine councilmen expired June 30, 1972. A U. S. Supreme Court injunction halted the scheduled election of May 2, 1972, pending solution of the problems caused by dilution of black voting strength and failure of the city to win Justice Department approval for the annexation. The Voting Rights Act required prior federal approval before new laws affecting voting in certain southern



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# City Gets Nine-Ward Plan For Election of Council

*Continued From First Page*

the Washington court with the ward plan, final determination by the court could come by June. If there is no appeal to the U. S. Supreme Court, "we are maybe talking about an election in September," said Mattox.

The Richmond Crusade for Voters, intervenors in the litigation is to meet at 8 o'clock Monday night at Slaughter's Hotel, according to the president, Mrs. Edwina Hall, and may act to consider the latest development in the ward-deannexation controversy.

Carpenter said last night, "I'm going to see if the lines are nonracially drawn—I'm going to look at this very carefully."

Vice Mayor Henry L. Marsh III, the only black member of the present council, was not present.

Councilman Wayland W. Rennie favors the plan approved by the Justice Department, as he said in a letter to Mattox earlier. Others who have voted for the plan in the past are Mayor Bliley, Councilmen Henry L. Valentine, William V. Daniel and Nathan J. Forb. Councilman Aubrey H. Thompson, a resident of the territory annexed in 1970, has consistently voted against a ward system.

Mattox cautioned council last night that the Washington court is yet to consider the matter, even though Justice Department approval shifts that agency to the city's point of view in the litigation.

Richmond's lawyers last month unanimously urged City Council to seek Justice Department approval for the nine-ward plan, warning that deannexation was possible. The team of city lawyers includes Charles Rhyne of Washington; former City Manager Horace H. Edwards, John S. Davenport III and former assistant City Atty. Daniel T. Balfour.

asked Mattox how soon an election may be held under the nine-ward system.

Mattox said that assuming council authorizes his move into

*Continued on Page 6, Col. 1*

states can become effective. Annexation opponents have argued that the annexation is invalid, but the city has maintained control over the territory.

Councilman Nathan J. Forb

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Five of the present nine councilmen live in the West End ward north of the James River on the map approved by the Justice Department. They are Mayor Bliley, Forb, Daniel, Valentine and Howard H. Carwile. Bliley, Daniel and Carwile have announced they are not candidates for re-election. Daniel is leaving council July 2 because of the press of business; Carwile is leaving at the same time to begin his campaign for election to the Richmond-Henrico floater seat in the Virginia House of Delegates, running as an independent.

Bliley, too, is leaving because of the press of business, but he has not set a definite date.

Four councilmen, Thompson, Rennie, Carpenter and Marsh, live in wards not occupied by other incumbents.

City Hall sources say that black Richmonders would predominate in five wards, whites in four. Although there appears to be little population difference among the wards, the number of registered voters differs as much as 100 per cent among between some.

The West End ward north of the river, for example, has 19,245 of the city's 121,018 registered voters, while the ward in the area of old South Richmond has only 9,694 registered voters.

VIRGINIA: At an adjourned meeting of the Board of Supervisors of Chesterfield County, held at the Courthouse on October 13, 1971 at 9:00 a.m.

On motion of the entire Board, it is resolved that if the Executive Secretary of Chesterfield County is called to testify in the Curtis Holt suit and asked the attitude of the County to the de-annexation of the territory awarded to Richmond effective January 1, 1970, that he be authorized to inform the Court that the Board of Supervisors of Chesterfield has been advised by its financial advisors that the County is capable of assuming any legal obligations that may fall upon it as a result of such action and that the Board would welcome the opportunity to reassume jurisdiction of the annexed area.

Ayes: Mr. Horner, Mr. Browning, Mr. Apperson, Mr. Dietsch, Mr. Martin and Mr. Purdy.

A Copy: Teste- s/s M. W. [illegible]
County Administrator

**K. Holt, Exhibit 2 – Resolution.**



**L. Proposed Findings of Fact and Conclusions of Law, filed by the Intervenor Crusade for Voters, with the Special Master, November 27, 1973.**

[Caption omitted in printing]

## DEFENDANT-INTERVENOR CRUSADE FOR VOTERS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

### A. Basic Demography

1. On July 12, 1969, the Circuit Court of the County of Chesterfield, Virginia entered a final order of annexation awarding the City of Richmond approximately 23 square miles of Chesterfield County. The annexation became effective December 31, 1969.

*Holt* v. *Richmond* Record.

2. The population of the City of Richmond, Virginia, as of 1970, not including the portion of Chesterfield County which was annexed on December 31, 1969, was 203,359, of which 105,209 were non-white and 98,140 were white.

City of Richmond Exhibits 1, 2 and 3.

3. The population of the annexed area as of 1970 was 46,262, of which 555 were non-white and 45,707 were white.

City of Richmond Exhibits 1, 2 and 3.

4. The City of Richmond is governed by a nine member City Council. From 1948 to the present time, the City of Richmond has held at-large elections for the nine City Council seats.

Virginia Acts of Assembly, Chapter 116, § 3.01 (Richmond City Charter).

**B. History of Racial Discrimination in Richmond**

5. The housing pattern in the City of Richmond is mostly segregated. Race is the dominant factor in determining the quality of life that people enjoy in the City of Richmond.

Testimony of Henry Marsh, p. 583-584.

6. There has been a history of discrimination against blacks in Richmond. For example, "tests" and "devices" were used until the passage of the Voting Rights Act in 1965, and until 1966, it was necessary for a voter in the City of Richmond to pay a poll tax before being permitted to vote in Councilmanic elections. Public schools were segregated by law until recently.

Code of Virginia, 1950, § 24-27, § 24-67;
Constitution of Virginia § § 18, 21 and 22;
Testimony of W. S. Thornton, p. 20, *Holt* v. *Richmond* Testimony.



7. The number of qualified black voters in the old portion of the City of Richmond increased from approximately 4,000 in 1956 to more than 35,000 in 1970.

Testimony of W. S. Thornton, p. 14, *Holt* v. *Richmond* Testimony.

8. There are approximately twice as many registered voters in the white wards as in the black wards in the City of Richmond.

Testimony of Henry Marsh, p. 589-590.

**C. Political Activity in Richmond.**

9. The Crusade for Voters of Richmond, Virginia is an unincorporated association composed primarily of black voters which has been active for two decades in representing and asserting the views of Richmond's black citizens, especially with regard to voting.

Testimony of William S. Thornton pp. 9-12, *Holt* v. *Richmond* Testimony.

10. The Crusade for Voters has endorsed candidates for City Council who it thought would be favorable to black people in Richmond. The candidates endorsed by the Crusade for Voters have received much greater support from blacks than candidates of either race who were not endorsed by the Crusade for Voters. Three candidates endorsed by the Crusade for Voters were elected to the City Council in 1970, Mr. Carwile, Mr. Carpenter and Mr. Marsh.

Testimony of William S. Thornton, pp. 24-34, *Holt* v. *Richmond* Testimony;

Testimony of Thomas J. Bliley, Jr. pp. 333-334, *Holt* v. *Richmond* Testimony.

11. The Crusade for Voters does not lend financial support to candidates.

Testimony of William S. Thornton, p. 12, *Holt* v. *Richmond* Testimony.



12. Richmond Forward was a white political organization which controlled the Richmond City Council in the late 1960's.

Testimony of William S. Thornton pp. 24-26, *Holt* v. *Richmond* Testimony;

Testimony of Ronald P. Livington pp. 294-295, *Holt* v. *Richmond* Testimony;

Testimony of Roger C. Griffen, pp. 267-268, *Holt* v. *Richmond* Testimony;

Testimony of Thomas J. Bliley, pp. 347-351, *Holt* v. *Richmond* Testimony.

13. Richmond Forward endorsed and financed the campaigns of candidates for City Council.

Testimony of Thomas J. Bliley, p. 71.

14. Richmond Forward prepared a report analyzing the 1968 election in terms of racial voting patterns.

Testimony of Thomas J. Bliley, p. 334, *Holt* v. *Richmond* Testimony.

15. The Richmond Forward organization was succeeded by a white political organization known as the Team of Progress.

Testimony of Thomas J. Bliley, Jr., p. 75.

16. Of the six City Councilmen elected in 1970 who were endorsed by the Team of Progress four reside within a small area in the northwest portion of the City.

City of Richmond, Exhibit 16;
Testimony of Thomas J. Bliley, Jr., pp. 66-69
Defendant United States, Exhibit 9.

17. In recent Richmond City Council elections black candidates endorsed by the Crusade for Voters have received a high percentage of the black vote and a low percentage of the white vote while white candidates not endorsed by the Crusade for Voters have received a high percentage of the white vote and a low percentage of the black vote.

Defendant, United States Exhibits 3-10.

18. In the 1970 election if only the votes cast by residents of the pre-1970 annexation portion of the city had been counted, an additional black candidate endorsed by the Crusade for Voters would have been elected.

Testimony of William Thornton, p. 34-35, *Holt* v. *Richmond* Testimony.

19. In the 1970 election the precincts in the annexed area voted heavily for white candidates and heavily against black candidates.

Defendant, United States Exhibit 5;
Plaintiff Exhibit 3, *Holt* v. *Richmond* Record.



**D. History of Annexation**

20. On July 2, 1962, the City of Richmond filed an Annexation Suite aginst the County of Chesterfield, Virginia, seeking the annexation of fifty-one square miles of Chesterfield County.

Defendant's Exhibit 18, *Holt* v. *Richmond* Record.

21. On May 15, 1969, a compromise boundary line was drawn known as the Horner-Bagley line, by which approximately 23 square miles of Chesterfield County would be annexed by the City of Richmond.

Testimony of Melvin W. Burnett, p. 18, *Holt* v. *Richmond* Testimony;

Testimony of Irvin G. Horner, pp. 173, 174, *Holt* v. *Richmond* Testimony;

Testimony of Phil J. Bagley, Jr., pp. 413-420, *Holt* v. *Richmond* Testimony.

22. The Horner-Bagley line was agreed upon after extensive secret negotiations between certain representatives of the City of Richmond and representatives of Chesterfield County. In all meetings with regard to settlement the City maintained a consistent position that required all negotiations to center upon and be concerned with the number of white people that the City would receive by settlement. All economic, geographical and other considerations were simply not discussed or were brushed aside. In the words of the City Manager, the City had to "balance the population." The acceptable mini-

mum number remained relative constant at 44,000 people. The City was careful to ascertain racial percentage figures from the county during its negotiations. The final line was not actually drawn until the Mayor of the City, Mr. Bagley, had assurances that at least 44,000 white people would be given up by the County.

Testimony of Melvin W. Burnett, pp. 92-112, 120, *Holt* v. *Richmond* Testimony;

Testimony of Irvin Horner, pp. 145-179, *Holt* v. *Richmond* Testimony.

23. At all times during the course of the negotiations with representatives of Chesterfield County, the Mayor was in constant contact with the six Richmond City Councilmen endorsed by Richmond Forward. All Council representatives of the black citizens were, however, systematically excluded from all meetings and conferences. The representatives of black citizens knew nothing of the policy questions involving the annexation until after they became public knowledge.

Testimony of Henry L. Marsh, pp. 64-71, 81, *Holt* v. *Richmond* Record;

Testimony of Melvin W. Burnette, p. 102, *Holt* v. *Richmond* Testimony;

Testimony of Donald Pendleton, pp. 215-216, *Holt* v. *Richmond* Testimony;

Testimony of James Carpenter, pp. 226-227, *Holt* v. *Richmond* Testimony;

Testimony of Thomas J. Bliley, pp. 350, 353-355, *Holt* v. *Richmond* Testimony;



Testimony of Phil J. Bagley. 423, 424, 431-432, *Holt* v. *Richmond* Testimony;

Testimony of Alan F. Kiepper, pp. 563, 567, 570-572, 611-614, 619-621, *Holt* v. *Richmond* Testimony.

24. Mr. Talcott, the City Boundary Expansion Coordinator, who gathered and had available all information concerning vacant land, economics, taxes, schools, utilities, etc., was not consulted for any information whatsoever concerning a compromise, by either the Mayor, the City Council or the Attorneys in the suit, until after the compromise had been reached. Mr. Talcott was not even aware that such a compromise had been reached until some 11 days after the fact.

Testimony of George R. Talcott, pp. 319-321, *Holt* v. *Richmond* Testimony.

25. At the time the Agreement was entered into, the City Council and the Mayor had no information by which they could evaluate a compromise line agreement in any respect other than its size and the number of people it contained although such information is necessary in order to properly evaluate a line.

Testimony of Melvin W. Burnette, p. 120, *Holt* v. *Richmond* Testimony;

Testimony of George R. Talcott pp. 319-321, *Holt* v. *Richmond* Testimony;

Testimony of Thomas J. Bliley, p. 356, *Holt* v. *Richmond* Testimony;

Testimony of Phil J. Bagley, p. 428, *Holt* v. *Richmond* Testimony;

Testimony of A. Howe Todd, p. 524, *Holt* v. *Richmond* Testimony;

Testimony of Alan F. Kiepper, pp. 574, 577, *Holt* v. *Richmond* Testimony.

26. During the period May 16, 1969 to July 1, 1969, the Richmond City School Administration and the Assistant City Manager reported to the City Council and the City Manager for the first time, on school building needs, number of school children, population, vacant land, and financial needs in the annexed area.

Plaintiffs' Exhibit 13, *Holt* v. *Richmond* Record;

Testimony of George R. Talcott, pp. 140-142 *Holt* v. *Richmond* Testimony.

27. Annexations in Virginia become effective at midnight on December 31 of the year in which the annexation order becomes final.

Virginia Code § 15.1-1041(d).

28. Mayor Bagley and Councilman Davenport made acceptance of the Horner-Bagley line conditional on the fact that the annexation would go into effect January 1, 1970, and the people in the annexed area would be eligible to vote in the Councilmanic elections of 1970.

Testimony of Irvin Horner, pp. 177-178, *Holt* v. *Richmond* Testimony.



29. The final boundary line for the annexation, as drawn by the Court, followed with near exactness the compromise which had been made between Horner and Bagley.

Testimony of Irvin Horner, pp. 174-175, *Holt* v. *Richmond* Testimony.

30. The area of Chesterfield County annexed to the City of Richmond contained 475 acres of potential industrial land and 729 acres of potential commercial land as opposed to 1,819 acres and 1,431 acres respectively in the area originally sought to be annexed.

Plaintiffs' Exhibit 15, *Holt* v. *Richmond* Record.

31. The area of Chesterfield County annexed to the City of Richmond contained 51% of the value of the tax assessable property in the total area sought to be annexed, 59% of the school age children, 60% of the total population, and 46% of the total land area.

Plaintiffs' Exhibit 15, *Holt* v. *Richmond* Record.

32. During the course of the annexation proceedings and shortly thereafter, various officials of the City made statements on the annexation as follows:

(a) In 1966, at Fairfield, Virginia, City Councilman James C. Wheat Jr., stated that the City needed 44,000 leadership-type white affluent people.

Testimony of Irvin C. Horner, pp. 152, *Holt* v. *Richmond* Testimony.

(b) Between July 16, 1968 and September 12, 1968, Mr. Alan F. Kiepper, Richmond City Manager, and Mr. Melvin W. Burnett, Executive Secretary of the Board of Supervisors of Chesterfield County, met to negotiate the pending annexation suit. At those meetings, the only consideration stated by Mr. Kiepper was the number of white and black people in the area to be annexed.

Testimony of Melvin W. Burnett, pp. 97-111, *Holt* v. *Richmond* Testimony.

(c) At a meeting in Williamsburg, Virginia in March of 1969, Mr. Connard B. Mattox, City Attorney; Mayor Crowe and Mr. Phil J. Bagley, Jr., stated to Irvin G. Horner, Chairman of the Board of Supervisors of Chesterfield County, that the City must annex a part of Chesterfield County or the City of Richmond would become all black.

Testimony of Irvin G. Horner, pp. 162-165, *Holt* v. *Richmond* Testimony.

(d) At a meeting of the Aldhizer Commission in July of 1968, Mr. Willey, Representing the City of Richmond said to Donald C. Pendelton, Member of the House of Delegates, that the City was concerned about the 1970 election going all black and the City of Richmond becoming "another Washington, D. C.".



Testimony of Donald G. Pendelton, pp. 212, 213 *Holt* v. *Richmond* Testimony.

(e) In the fall of 1968 in a meeting with Mr. Leland Bassett, at Charlottesville, Virginia, Mayor Phil J. Bagley, Jr., stated "As long as I am Mayor of the City of Richmond, the niggers will not take over this town", and also expressed concern about the City of Richmond becoming "another Washington, D. C.".

Testimony of Leland Bassett, pp. 165-168, *Holt* v. *Richmond* Testimony.

(f) In February of 1970 at the Willow Oaks Country Club, Mr. Henry Valentine, City Councilman, and Mr. Nathan Forb, City Councilman, stated that the purpose of the annexation was to keep the City from going all black.

Testimony of George W. Jones, pp. 253-255, *Holt* v. *Richmond* Testimony;

Testimony of Roger C. Griffin, pp. 270-273, *Holt* v. *Richmond* Testimony;

Testimony of Ronald P. Livingston, pp. 264-266, *Holt* v. *Richmond* Testimony.

(g) On September 12, 1970, at a meeting of the Virginia Municipal League, Mayor Phil J. Bagley, Jr., stated to Mr. James G. Carpenter, that "Niggers are not qualified to run the city."

Testimony of James G. Carpenter, pp. 230, *Holt* v. *Richmond* Testimony.

### E. Purpose and Effect of Annexation

33A. Based on the foregoing facts, the Court finds that the City of Richmond has not met its burden of proving that the annexation did not have the purpose of diluting black citizens' votes.

33B. Based on the foregoing facts, the Court finds that the City of Richmond has not met its burden of proving that the annexation did not have the effect of diluting black citizens' votes.

### F. Submission of Annexation to Attorney General

34. In 1971, the annexation and the concommitant changes in election practice or procedure were submitted to the Attorney General for his review pursuant to § 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

Plaintiffs' Request for Admission of Facts #7 and Parties' Responses thereto.

35. The Crusade for Voters urged an objection to the approval of the annexation by the Attorney General.

Stipulation of Parties, pp. 701-702.

36. On May 7, 1971, the Attorney General interposed an objection to the voting changes which resulted from the annexation, and on September 30, 1971, the Attorney General refused to withdraw the objection.

Plaintiffs' Request for Admission of Facts #8 and 9 and the Parties' Responses thereto.



### G. Preparation of Ward Plans

37. During 1971 the City of Richmond prepared several possible plans for dividing the City into Councilmanic election districts. At least 3 nine district, 2 five district, a six district, and a two district plan were prepared. Every one of the plans included a district which crossed the James River.

City of Richmond Exhibits 12, 13;
Crusade for Voters Exhibits 1, 2, 3, 4, 5;
Testimony of Dallas Oslin, pp. 213, 295-297.

38. An additional nine district plan known as Plan D was prepared in 1973. No ward in Plan D crossed the river.

Testimony of Dallas Oslin, pp. 213;
City of Richmond Exhibit 14.

39. Dallis Oslin, who prepared all of the various ward plans first testified that he had not received any instructions as to how he should draw the ward plans and later testified that he had been told to keep the maximum population deviation to less than four or five percent (apparently meaning that no district should deviate from the ideal by more than four or five percent).

Testimony of Dallas Oslin, pp. 235-236, 292-293.

40. There was conflicting testimony as to the impetus for the preparation of Plan D.

Testimony of Thomas J. Bliley, pp. 99-100;
Testimony of Dallas Oslin, p. 300.

41. The maximum amount by which any district deviated from the ideal on the various nine ward plans which were later presented to the Department of Justice is as follows:

| | |
|---|---|
| Plan A (Crusade for Voters Exhibit 3) | 4.17% |
| Plan B (City of Richmond Exhibit 13) | 3.24% |
| Plan C (City of Richmond Exhibit 12) | 3.24% |
| Plan D (City of Richmond Exhibit 14) | 4.99% |

Plans A, B and C all contain wards which straddle the river and were prepared in 1971.

Crusade for Voters Exhibit 3;

City of Richmond Exhibits 1, 2, 3, 12, 13, 14.

42. The maximum amount by which any district deviated from the ideal on the six ward plan prepared in 1971 was 4.72%.

Crusade for Voters Exhibit 2;

City of Richmond Exhibits 1, 2 and 3.

**H. Submission of Plans to Department of Justice**

43. On April 9, 1973 the City of Richmond presented the four nine ward plans to the Department of Justice. Three of the plans contained wards which straddle the James River.



Testimony of Thomas J. Bliley, p. 114;

Testimony of Dallas Oslin, p. 213-214;

City of Richmond Exhibits 12, 13 and 14;

Crusade for Voters Exhibit 3.

44. After consultations with the Department of Justice a new plan was prepared which was essentially a revision of Plan D. The maximum amount by which any district deviates from the ideal on this new plan is 4.99%.

Testimony of Thomas J. Bliley, pp. 58-59;

City of Richmond Exhibit 15.

45. On May 1, 1973 the Richmond City Council formally adopted the newly prepared ward plan dated April 25, 1973.

City of Richmond Exhibits 15, 17.

46.. There is no evidence that the City ever thereafter sought to draw or modify any districting plans in any manner.

**I. Factors Used in Preparing Ward Plans**

47. There is no evidence that in drawing, analyzing or adopting any districting plans, the City made any attempt to minimize the dilution of the black vote which had been caused by the annexation.

Testimony of Dallas Oslin, pp. 216, 306-308.

48. Dallas Oslin drew all the City's plans wholly by himself. Mr. Oslin is a technician who lives outside Richmond and who indicated unfamiliarity with the interests or attitudes of people in various neighborhoods, except those interests which have come up in connection with specific zoning or similar issues.

Testimony of Dallas Oslin, pp. 276-288.

49. The principal factors purportedly followed by Dallas Oslin in preparing the City's ward plans, apart from population equality, were "communities of interest," neighborhoods, and respect for physical boundaries.

Testimony of Dallas Oslin, p. 215.

50. The other two City witnesses, Mayor Bliley and Mr. Todd, generally agreed that the factors noted by Mr. Oslin were the proper ones to be used.

Testimony of Thomas Bliley, pp. 63-64;

Testimony of A. Howe Todd, pp. 344-345; 424-425.

51. Vice-Mayor Henry Marsh, testifying for Defendant-Intervenor Crusade for Voters, disagreed and said that the two critical factors should be population equality and minimization of dilution. He agreed that maintenance of neighborhoods was also important, but said that physical boundaries are netural and that the concept of "communities of interest" was not relevant.



Testimony of Henry Marsh, pp. 581-585.

52. The decision whether a districting plan satisfied appropriate criteria (properly weighed) is a question of law, but the Court believes it instructive to set forth the testimony on these points as presented by the various witnesses. As will be seen below, there was general agreement that it is desirable to keep neighborhoods intact, but conflict over whether the concepts of "communities of interest" and "physical boundaries" are meaningful or offer any useful guide in drawing districts.

**Neighborhoods**

53. Neighborhoods are small areas generally consisting of a few hundred to a few thousand people. The number of neighborhoods in Richmond was variously estimated at 50-60 to 200-300. Many neighborhoods have civic associations, of which there are 60 or more.

Testimony of Henry Marsh, pp. 580-582;

Testimony of A. Howe Todd, p. 428;

Testimony of Dallas Oslin, pp. 272-276.

54. Because the size of wards in Richmond is large in comparison to the size of neighborhoods, every ward will be a combination of a large number of different neighborhoods.

Testimony of Dallas Oslin, pp. 278, 286-287

Testimony of A. Howe Todd, pp. 445-460.

55. Splitting of neighborhoods should be kept to a minimum. Because they are so small, however, it is generally not difficult to move a line slightly to keep a neighborhood together.

Testimony of Dallas Oslin, p. 290;

Testimony of Henry Marsh, p. 582.

56. In each plan, however, some neighborhoods were split. For example, the City plan splits the Fan District, parts of Chamberlayne Avenue, Westover Hills and Barton Heights, while the Crusade for Voters plan (Exhibit 21) splits Gilpin Court Apartments:

Testimony of Thomas J. Bliley, pp. 176-177;

Testimony of Dallas Oslin, p. 291;

Testimony of Henry Marsh, pp. 585-586;

Testimony of A. Howe Todd, pp. 455-456, 496-497, 707.

**Communities of Interest**

57. The City witnesses testified that "community of interest" is a meaningful term referring to the combination of homogeneous people of similar interests in the same ward. Each of these witnesses had difficulty telling how to determine the interests of various citizens, except for their repeated statements that people living on opposite sides of the river had different interests. Mr.



Todd also testified that the "interests" involved related to local services and facilities, but not to politics. The City witnesses did not appear to believe that race was a significant factor in defining "communities of interest."

Testimony of Thomas J. Bliley, pp. 134-135, 137;

Testimony of Dallas Oslin, pp. 227-232;

Testimony of A. Howe Todd, pp. 401-410, 428-492.

58. Nine in the City connected with either the preparation or adoption of the ward plans undertook any study of the attitudes and issues then affecting or creating communities of interest within the City of Richmond.

Testimony of Thomas J. Bliley, pp. 136;

Testimony of Dallas Oslin, pp. 277-278;

Testimony of A. Howe Todd, pp. 354-355, 489-490.

59. Vice Mayor Marsh, on the other hand, testified that it would be impossible to make any general determinations about "community of interests," because there were few if any instances where a given group of people shared interests in general with another specific group of people. Rather, every citizen is likely to share different interests with various other citizens. "Communities of interest" are issue-oriented and are likely to form, shift and dissipate within short periods of time as issues change. He also testified that neighborhoods could

have much or little to do with various communities of interest, and that people within a given neighborhood could share interests or not. City witnesses agreed that people's interests often had little to do with their neighborhoods.

Testimony of Henry Marsh, pp. 581-594;

Testimony of Dallas Oslin, pp. 283-287.

**Physical Boundaries**

60. The use of physical boundaries such as parks, highways, railroads and rivers as dividing lines between wards is deceptive because such physical boundaries, no matter how striking they look on a map, are neutral factors. Physical boundaries may unite people or may divide them.

Testimony of Henry Marsh, p. 584;

Testimony of A. Howe Todd, p. 426.

61. Citizens who live near the James River on the south side and citizens who live near the James River on the north side currently have a particular community of interest with each other with regard to the river which they do not share with citizens who do not live close to the river.

Testimony of Henry Marsh, pp. 586-587.

62. Citizens who live in the apartment buildings which line the east side of Chamberlayne Avenue share a



community of interest with citizens who live in the apartment buildings which line the west side of Chamberlayne Avenue. That community of interest is not shared by the other citizens who live in Ward B or Ward C which wards lie respectively to the east and to the west of Chamberlayne Avenue according to the City's plan.

Testimony of Henry Marsh, pp. 585-586.

63. The ward plan adopted by the City of Richmond contains numerous instances of wards which straddle such natural boundaries as Forest Hill Park, Interstate Route 95, and the Richmond Metropolitan Authority Tollroad.

Testimony of A. Howe Todd, pp. 491-498, 716;

Testimony of Thomas J. Bliley, pp. 174-177;

Testimony of Dallas Oslin, pp. 318-321.

63A. The City Council never discussed the concept of nor gave instructions to anyone with regard to drawing ward plans with regard to "communities of interest" or neighborhoods.

Testimony of Thomas J. Bliley, pp. 135-136.

64. Based on Findings of Fact 47-63, the Court makes the following Finding about neighborhoods and "communities of interest." Neighborhoods are small areas which form the building blocks of wards, and it is appropriate to avoid splitting these building blocks wherever possible.

The term "communities of interest," however, seems to refer to judgments concerning the ways in which the small building blocks are combined. Since all groupings of neighborhoods into wards will involve combining heterogeneous people and neighborhoods, it is illusory to think that a concept like "communities of interest" can offer definitive guideposts that would point strongly to selecting one plan or set of lines over another. Accordingly, the Court finds that standards based upon physical boundaries and the concept of "communities of interest" are insufficiently intelligible or definite to offer a very useful guide in drawing districts. While they are not impermissible criteria, the Court cannot find that they should be elevated to a status comparable to the primary requirement of population equality and minimization of dilution.

**J. The James River as a Factor in Preparing a Ward Plan**

65. The City's principal argument in favor of its plan is that the James River is a natural physical boundary which should not be crossed by any ward. This refrain was repeated at every opportunity during the trial, e.g., Testimony of Thomas Bliley, pp. 139-140, 146, 194.

66. This insistence on the importance of the river as a boundary is a recent phenomenon. Every ward plan prepared prior to 1973 contained a ward which straddled the river.



Testimony of Thomas J. Bliley, p. 171.

67. Two of the plans prepared by the City of Richmond in 1971 were introduced by the City in *Holt* v. *Richmond* as possible remedies. Both of those plans contained wards which straddle the James River.

City of Richmond Submission, *Holt* v. *Richmond* Record.

68. Indeed, there has been stiff opposition to the adoption of any nine ward plan, and a preference for a five ward plan, by most of the Richmond Forward – Team of Progress members of City Council.

Testimony of Thomas J. Bliley, pp. 90, 95, 105-108,

Crusade for Voters Exhibits 9 and 11.

69. Because of population distribution, any five-ward plan would have to have at least one ward straddle the James River.

City of Richmond Exhibits 1, 2 and 3;

Crusade for Voters Exhibits 1 and 5.

70. There is no evidence that the City had any interest, prior to 1973, in avoiding wards which crossed the James River. When plan D, which used the river as a boundary, was drawn in March, 1973, there were some citizens who favored it and some who opposed it at a March 27, 1973 meeting of the City Council. After that

meeting ( which was concluded on April 2), the City Attorney took all four nine-ward plans to the Justice Department. Mayor Bliley testified that a number of citizens voiced opposition to a ward crossing the river, but he remembered no names nor the substance of any conversations, gave no times, and there is no indication in any City Council actions or minutes or in a news account of the March 27 meeting that the river was then regarded as an important factor.

71. If the James River is accepted as an inviolable boundary in dividing the City of Richmond into nine wards it places an automatic limitation upon the number of wards with a majority of black registered voters or even of black citizens.

City of Richmond Exhibits 1, 2 and 3;

Testimony of Henry Marsh, pp. 610-615..

72. Mayor Bliley testified that the river should be respected as a boundary even if it resulted in seven "white" and two "black" wards.

Testimony of Thomas J. Bliley, p. 194.

73. The City of Petersburg, Virginia was divided into seven councilmanic wards pursuant to a declaratory judgment of this Court. In an election held on June 12, 1973, a black majority was elected to the Petersburg City Council.



*City of Petersburg* v. *United States*, 354 F. Supp. 1021 (D.C. D.C. 1972), aff'd U.S. (1973).

74. The City of Richmond did not assert that the James River was an inviolable boundary until after it became evident that it would be necessary to prepare and justify a nine ward plan which did not minimize dilution to the greatest possible extent.

75. The City of Richmond knew as early as July 23, 1973 that a critical question in this case was whether it could justify a ward plan which did not eliminate dilution to as great extent as did certain plans prepared by the Crusade for Voters (which included wards crossing the river).

Transcript of Hearing of July 23, 1973, pp. 5-7.

76. Three weeks later, on August 13, 1973 the Richmond City Council by a vote of seven to two adopted a resolution reciting that the James River must be respected as a boundary on any ward plan for the City of Richmond. The two dissenting votes were cast by the two black members of the City Council. This is the only expression of City Council views on districting criteria, and there is no mention of population equality, minimization of dilution of black votes, or even of any other physical boundaries or "communities of interest."

City of Richmond Exhibit 19;

Testimony of Thomas J. Bliley, p. 121.

77. The only specific reasons presented by the City of Richmond to show why no ward should straddle the river were as follows:

(a) Mayor Bliley testified that people residing north of the river are interested in traversing the city in an east-west direction north of the river while people residing south of the river are interested in crossing the river traveling in a north-south direction.

Testimony of Thomas J. Bliley, p. 63;

See also Testimony of A. Howe Todd, pp. 411-412.

78. The City of Richmond is served by seven highway bridges which carry 28 lanes of traffic across the James River.

Testimony of Henry Marsh, p. 587.

79. Whether or not one or more wards straddle the James River, citizens will not have to cross the river in order to vote.

Testimony of Henry Marsh, p. 588.

80. The James River unites the people who live close to it even when they live on opposite sides, *e.g.*, those in Ward A with those in Ward D on the plan adopted by the City.



Testimony of Henry Marsh, pp. 586-587;

City of Richmond Exhibit 15.

81. Two state senatorial districts lie entirely within the Richmond City limits. Both of those districts straddle the James River. A third district includes part of the annexed area and part of the remainder of Chesterfield County.

Crusade Exhibit 12.

82. Until 1970, the City of Richmond operated a segregated school system. Under that system black high school students living south of the river were required to attend high schools north of the river notwithstanding the existence of a high school south of the river. Transportation was not provided to the students who were required to cross the river to attend school.

Testimony of Thomas J. Bliley, pp. 131-132;

*Bradley* v. *School Board of the City of Richmond*, 317 F. Supp. 555, 558, 561 (E.D. Va., 1970);

Crusade Exhibit 24.

83. The City of Richmond schools have been operated since 1971 under a Court approved desegregation plan prepared and submitted by the Richmond School Board. The members of the Richmond School Board are appointed by the Richmond City Council. Under the desegregation plan many students of all ages are required to cross the river to attend school. Elementary schools,

for example, on opposite sides of the river are paired. The City of Richmond did not provide transportation for school children until the 1972-1973 school year.

Crusade for Voters Exhibit 24;

Testimony of Thomas J. Bliley, pp. 123-124, 132.

84. Every individual who served as a City Councilman during the period from the mid-1950's until 1970 resided north of the river. This did not affect their ability to represent citizens who resided south of the river.

Testimony of Thomas J. Bliley, pp. 73-75;

Testimony of Henry Marsh, pp. 587-588.

85. The Court finds that the James River is not a racially neutral factor, but rather that any insistence that no ward can cross the river is racially discriminatory because it inevitably limits the degree to which dilution of black votes can be eliminated.

86. Based on the foregoing findings the Court finds that the City of Richmond has not proved that its interest in avoiding a ward which straddles the James River is sufficient to justify the dilution of black votes caused thereby.

**K. Comparison of City Plan with Crusade for Voters Exhibit 21**

87. The maximum amount by which any district deviates from the ideal on Crusade for Voters Exhibit 21 is 489 people, or 1.77%.



City of Richmond Exhibits 1, 2 and 3;

Crusade for Voters Exhibit 21.

88. The maximum amount by which any district deviates from the ideal on the plan adopted by the city is 1384 people, or 4.99%.

City of Richmond Exhibits 1, 2, 3 and 15.

89. Because a lower percentage of the black population is of voting age, the black voting age population of Ward H on the plan adopted by the City is significantly below 40% of the total voting age population of Ward H.

City of Richmond Exhibits 1, 2, 3 and 15.

90. The voter registration and participation in Ward H is higher for whites than for blacks.

Testimony of Henry Marsh, p. 590.

91. Wards A, B, D, H and I on the plan adopted by the City are white wards in the sense that the person elected from the ward would either be white or would be sympathetic to the "white point of view."

Testimony of Henry Marsh, p. 610.

92. Wards C, F, and G on the plan adopted by the City are black wards in the sense that the person elected from the ward would be black or would be sympathetic to the "black point of view."

Testimony of Henry Marsh, p. 611.

93. Ward E on the plan adopted by the City has a black population majority but nonetheless would be neither "white" nor "black" but would be a closely contested "swing" ward.

Testimony of Henry Marsh, pp. 611-613.

94. The annexation of 44,000 white people means that the process of drawing a district plan in effect begins with the equivalent of 1 - 1/2 wards of white people.

95. Crusade Exhibit 21 is, based upon a similar analysis of the composition of the wards, a plan for dividing the City of Richmond into nine wards which contains four "white", three "black" and two wards which, although they have a black majority of overall population, must be regarded as "swing."

Testimony of Henry Marsh, pp. 620-621.

96. Because of the small deviation of population among the wards on Crusade for Voters Exhibit 21 it is possible, without violating population equality, to adjust the lines to correct features of the plan, such as the division of the Gilpin Housing project, which the City finds objectionable.

Testimony of A. Howe Todd, pp. 727-728.

97. The City of Richmond has made no attempt to adjust the lines of the wards contained on Crusade Exhibit 21 to obviate any of the features of that plan which the City finds objectionable.



Testimony of A. Howe Todd, pp. 725-726.

98. On the basis of the Crusade Plan, the Court finds that it is possible to divide the City of Richmond into 9 relatively equal wards which respect neighborhood integrity while eliminating the dilutive effect of the annexation to a significantly greater degree than does the plan adopted by the City.

Crusade for Voters Exhibit 21.

## PROPOSED CONCLUSIONS OF LAW

1. This Court has jurisdiction over this action pursuant to Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973 c.

2. Plaintiff is a political subdivision of the Commonwealth of Virginia with respect to which the provisions of said section are in effect. 30 F.R. 9897, August 7, 1965.

3. The annexation of land from Chesterfield County on December 31, 1969, and the changes resulting therefrom are within the scope of Section 5 of the Voting Rights Act, 42 U.S.C. 1973 c. *Perkins* v. *Matthews*, 400 U.S. 379 (1971); *City of Petersburg* v. *United States* (D.C. D. Col. 1972), 354 F. Supp. 1021, aff'd, 410 U.S. 962 (1973).

4. In seeking to meet the requirements of Section 5 for enforcement of the voting changes brought about by the annexation, the City of Richmond bears the burden of proving both non-discriminatory purpose and non-discriminatory effect. This allocation of the burden means, among other things, that issues as to which the

evidence is in equipoise must be resolved against the City and that any inferences which must be drawn because of gaps in the evidence are likewise to be drawn against the City.

5. The City of Richmond has not met its burden of proving that the annexation did not have the purpose of diluting black citizens' votes.

6. The City of Richmond has not met its burden of proving that the annexation did not have the effect of diluting black citizens' votes.

7. The annexation here involved can be approved only if modifications calculated to neutralize any possible adverse effect upon the political participation of black voters in the City of Richmond are adopted. *City of Petersburg* v. *United States, supra.*

8. To be acceptable any plan for dividing the City of Richmond into nine councilmanic wards should respect the principles of one man, one vote, while eliminating the racially dilutive effect of the annexation to the greatest extent reasonably possible.

9. Other criteria such as neighborhood integrity, compactness, physical boundaries, and even "community of interest" may be considered but only so long as they do not interfere with the overriding objectives of population equality and elimination of dilution of black citizens' votes. *Kirkpatrick* v. *Preisler,* 394 U.S. 526 (1969).

10. The nine ward plan adopted by the City of Richmond, Plaintiff's Exhibit 15, does not eliminate the dilutive effect of the annexation to the greatest extent reasonably possible because the proof shows that the City never made any such attempt and because the City steadfastly ignored indications (*i.e.*, alternative plans prepared by the Crusade for Voters) that a plan could be



prepared which would eliminate the dilutive effect of the annexation to a greater degree. *Kirkpatrick* v. *Preisler,* 394 U.S. 516 (1969).

11. Plaintiffs' case has been limited to proof purporting to show that it was valid or reasonable, to draw a plan using a criterion referred to as "community of interest", and maintaining the James River as an inviolate boundary. Whatever the legitimacy of such criteria when all other things are equal, or when they are considered in a traditional Fourteenth or Fifteenth Amendment case where the burden of proof is on the opponents of a plan, the situation is different in a Voting Right Act case, where the burden of proving non-discrimination is a heavy burden upon the plaintiff. *City of Pitersburg* v. *United States,* 354 F. Supp. 1021, 1027 (D.D.C. 1972). See *Swann* v. *Charlotte-Mecklenburg Co. Bd. of Ed.*, 402 U.S. 1, 28 (1972).

12. In a Voting Rights Act, as in other cases involving racial discrimination, the Court has the obligation of requiring the City to take action which will fully remedy the wrongs. *City of Petersburg* v. *United States, supra.* See *White* v. *Regester,* 37 L. Ed. 2d 314, 324-26 (1973); *Swann, supra,* 402 U.S. at 15; *Taylor* v. *McKeithen,* 407 U.S. 191 (1972).

13. In such a case, the City of Richmond was obligated to show that its chosen criteria are so important that they should outweigh, and justify totally ignoring, the requirement of minimizing dilution of black votes. The Court concludes that the City has not discharged this obligation, for the following reasons among others: (i) the confusing, conflicting testimony about "community of interest"; (ii) the belated emergence of the City's insistence upon maintaining the River as a boundary; (iii)

the failure even to present any proof seeking to show that the City plan would not dilute black votes; and (v) the failure to consider whether an alternate plan (such as the Crusade for Voters plan – Exhibit 21) would involve less dilution.

14. Based on the evidence introduced in this case the Court concludes that a plan which adopts the James River as an inviolable boundary line cannot minimize dilution of the black vote to the greatest extent possible. The insistence of the City upon the River as an immutable boundary on any plan violates its duty to minimize to the greatest extent possible the dilution caused by the annexation. *Davis* v. *Board of School Commissioners,* 402 U.S. 33 (1971); *Megley* v. *School Board of the City of Danville,* F. 2d (CA 4, August 3, 1973); *Hobson* v. *Hansen,* 269 F. Supp. 401, 517 (D.D.C. 1967) appeal dismissed 393 U.S. 801 (1967).

15. To meet its burden of proving non-discriminatory purpose, the City of Richmond must prove that the drawing of its ward plan is free of the taint of the annexation, *i.e.*, that the City, in presenting and insisting upon its ward plan, has no purpose of maintaining white voters' control over a majority of the City Council seats. This burden, which is more acute than in Petersburg (where the annexation itself was concededly non-racial in purpose), has not been met.

16. In determining how well a given districting plan meets necessary criteria, Courts look at possible alternatives, including alternate plans, *White* v. *Weiser,* 37 L. Ed. 2d 335, 343-44 (1973).

17. Crusade Exhibit 21 (Plan R) appears to minimize dilution to a greater extent than the City plan, while



better satisfying the one-man one-vote criterion. The City never explained why it could not minimize dilution to the extent achieved in Crusade Exhibit 21; its challenge to the Crusade plan was limited to presenting testimony tending to show that certain of the ward boundary lines in the Crusade plan were inferior by the criteria of neighborhood integrity and "community of interest." The City has never attempted to determine whether those lines could be adjusted to satisfy those criteria by loosening the population constraints to the level of the City plan. Accordingly, the Court must conclude that, as the proof stands, the City has shown no acceptable reason for failing to minimize dilution to the extent possible, *i.e.*, to the extent achieved by Crusade Exhibit 21. *Kirkpatrick* v. *Preisler,* 394 U.S. 526 (1969).

18. If the City of Richmond were to shift to a ward system of electing its City councilmen pursuant to a ward plan similar or identical to Crusade for Voters Exhibit 21, the impermissible purpose and the dilutive effect of the annexation would be effectively neutralized.

19. The annexation of land from Chesterfield County by the City of Richmond on December 31, 1969, if modified by a nine ward plan similar to Intervenor's Exhibit 21 would not have the purpose or the effect of denying or abridging the right to vote on account of race or color.

20. For the foregoing reasons the declaratory judgment sought by the City is denied.

21. The Defendant United States shall recover from the Plaintiff City of Richmond its costs and the Defend-

ant-Intervenors shall recover from the Plaintiff City of Richmond their costs and reasonable counsel fees.

Dated: November 26, 1973 Respectfully submitted,

CRUSADE FOR VOTERS OF RICHMOND,
*et al.*, Intervenors

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**M.Findings of Fact and Conclusions of Law filed with Court below on November 26, 1973, to the Special Master, on behalf of Custis Holt, Sr., *et al.*, Defendant-Intervenors.**

[Caption omitted in Printing]

## REVISED FINDINGS OF FACT OF CONCLUSIONS OF LAW

### 1. Statement of Prior Related Litigation to Date

References herein to the transcript of the hearing before the Master, October 15, 1973 through October 17, 1973, are preceded by the letter "H". References to the transcript of Holt I are preceded by the letters "Tr." Where a second reporter transcribed the trial, the pages are not consecutive and these days are preceded by the letters, "B", "C", and "D" for September 24, December 19-20, 1971, respectively. Exhibits from Holt I are styled "Pl. ex. " for Holt and "Def. ex. " for the City of Richmond and are part of the record in this case.

In June, 1969, a Virginia three-judge annexation court adopted a compromise agreement between the governing bodies of the City of Richmond and Chesterfield County, stating:

> ". . . that all terms and conditions specified [in the compromise agreement] should constitute the conditions *verbatim.*" (exphasis supplied) (Def. ex. 20 [a], Tr. 120, Pl. ex. 6).

That a compromise agreement should be entered into was originally suggested and directed by the Court itself. (Def. ex. 20 [a]).

The effect of the compromise was to award approximately 47,262 citizens, of whom only 555 were black, and 23 square miles of territory to the City of Richmond, which became effective January 1, 1970.

Prior to January 1, 1970, the racial composition of the City of Richmond had been 52% black and 48% white. Subsequent to January 1, 1970, the racial composition was exactly as it had been January 1, 1960, i.e. 42% black and 58% white. (Pl. ex. 2).

**Course of Proceedings:**

On February 24, 1971, Curtis Holt, a Negro citizen of the City of Richmond, filed a class action, naming the City of Richmond, Richmond's City Manager, individual members of City Council, and others as defendants. Subsequent thereto, certain defendants were added or dropped with the end result being a class suit against the City of Richmond, the members of City Council and City Council, and the City Manager of the City of Richmond.

The suit alleged that the aforementioned annexation diluted the vote of the plaintiff class, that dilution was intentional and purposeful, the vehicle used was the aforementioned compromised annexation, and that as such the annexation was invalid as being in contravention of the Constitutionally protected rights of the class and that all elections held subsequent to said annexation were likewise invalid.

The Constitutional infirmity alleged was that the aforesaid actions of the defendants were in violation of



the Fourteenth and Fifteenth Amendments to the Constitution of the United States. No question of the Voting Rights Act was raised.

On May 7th, the U.S. Attorney General objected to the annexation, approval for which had been requested by the City on June 28, 1971, and which application had been objected to by Holt and the Crusade. No further formal action was taken by the Crusade or the Government until their appearance in the instant cause.

On June 1, 1971, Answers to the Complaint were filed and, over the objection of the plaintiff, the preliminary hearing was consolidated with the hearing on the trial on the merits set for September 20, 1971.

Trial on the merits was begun on September 20, 1971, and concluded September 24, 1971. On September 28th findings of fact were announced from the bench. At the conclusion thereof, the defendants moved orally for the taking of additional evidence. Over the objection of the plaintiff on October 12, 1971, the District Court granted said motion and set October 19 and 20, 1971, for the taking of additional evidence on the question of the practicality of de-annexation and other remedies after announcing that the plaintiff class was entitled to relief.

Plans were filed by defendants for remedies other than de-annexation, and argued at the October 19th and 20th hearing.

On November 20th, the District Court filed a Memorandum of its findings of fact and conclusions of law. On November 23, 1971, the Court entered its Order. A stay of the Order was granted by the Fourth Circuit on December 8, 1971. A Petition to Vacate the Stay was filed by Holt with the United States Supreme Court on December 9, 1971, which Petition was subsequently denied.

Also on December 9, 1971, Holt filed an action in the District Court for the Eastern District of Virginia, pursuant to Section 5 of the Voting Rights Act, seeking a judgment that the annexation was without effect for lack of prior approval by the Attorney General or the United States District Court for the District of Columbia. This cause, often referred to by the litigants as Holt II, was filed before a statutory three-judge court. This cause was stayed, pending appeal of the first Holt suit.

On March 15, 1972, Holt filed for an injunction in Holt II against the City to prevent an election for City Council scheduled for May 2, 1972.

On April 4, 1972, the Holt II Court denied the injunction.

Holt immediately filed an application to enjoin the elections before the United States Supreme Court and on April 24, 1972, Chief Justice Burger, with Justices Blackman and Rhenquist concurring, wrote the opinion of the Court granting Holt's application for injunction.

On May 3, 1972, the Fourth Circuit reversed the District Court on the grounds that motive and purpose of legislative bodies could not be examined under a pure Fifteenth Amendment claim, and expressed knowledge of the Holt II case, saying that their opinion in no way applied to the issues surrounding a claim under the Voting Rights Act.

On May 4, 1972, Holt filed a Motion for Summary Judgment in Holt II.

On August 25, 1972, the instant action was filed by the City, five days prior to a scheduled hearing in Holt II. On September 8, 1972, Holt petitioned to intervene in this cause.



On October 11th, Holt again appeared in Holt II to enjoin elections for Constitutional officers and all future elections which Order was granted that day.

On October 17, 1972, the Crusade petitioned to intervene in this cause.

On October 25th, argument was held in Holt II on the Motion for Summary Judgment and on a Motion by the City for a stay pending decision in this cause.

A decision to stay proceedings was entered February 14, 1973, and keeping the Summary Judgment under advisement, pending decision in the instant cause.

**2. Findings of Fact**

Virginia law makes each city and county separate, distinct, political subdivisions, unlike all other states in the Union. (Memo op P. 2).

The City of Richmond is surrounded by two counties. Henrico County wraps around the City to the North from East to West, while Chesterfield County wraps around the City to the South from the West to East.

It is possible to annex from surrounding counties to enlarge the City of Richmond, without substantially adversely affecting white/black ratios. (Census figures).

There are only two ways for a Viginia city to expand its population other than by birth and immigration. It must seek either to merge with an adjacent county or it must seek to capture that population contained within adjacent geographical areas by way of Virginia's annexation statutes. Va. Code Ann. §15.1032 *et seq.*

The City captured an additional 47,262 citizens (only 555 of whom were black) contained in a 23 square mile area (Pl. ex. 2) when in July 1969 a three-judge state

annexation court approved and adopted verbatim all terms and conditions of a compromise agreement between the City and County of Chesterfield in settlement of the suit by the City against the County. (Tr. 179).

There are fifteen elected officials of the City of Richmond, to-wit: City Treasurer, Commissioner of Revenue, City Sheriff, Attorney for the Commonwealth, Clerk of the Circuit Court, Division I, Clerk of the Circuit Court, Division II, and nine members of City Council. (Stipulation, H 634).

**Attempts by the City at Population Expansion:**

In 1960, the City of Richmond and County of Henrico entered into negotiations from which evolved a plan of merger of the two political subdivisions. (Tr. 3 P. 364-65).

In seeking support from County leaders, City officials stressed a theme that without merger the City would become a City of old, poor, and black, and laid special emphasis on the problem of the growing black population. (Tr. 236-37.)

The black citizens were specifically concerned with expansion in that it would dilute what little control, influence, and participation they had been able to achieve in the political process. (Tr. 53-4, Memo op. P. 6).

The merger plan was rejected due to a large negative vote in the County by referendum December 12, 1961. (Pl. ex. 4).

In the City, 100% of the black voter precincts voted against the merger, 68% of the racially mixed precincts voted against the merger, and 95.7% of the white precincts voted for the merger. (Tr. 35).



On December 26, 1961, the City exercised its second option to achieve population expansion and adopted ordinances to proceed with annexation suits against Henrico and Chesterfield. (Def. ex. 9 [a] [b]).

**The Henrico Annexation Case:**

On April 27, 1964, the Henrico Annexation Court awarded the City 45,310 citizens, 98.5% of whom were white. During this time no action was taken to proceed with the Chesterfield annexation case. (Def. ex. 37).

Cities in Virginia may raise monies for operations by the issuance of bonds, and the collection of taxes. Virginia municipal bonds can be of two types, general obligation bonds and revenue bonds. Revenue bonds can only be used for capital improvements which generate revenues such as utility expansions. (Tr.

The Henrico Award required the City to spend $13,490,000.00 over five years on capital improvements and to pay the County the balance of $41,435,000.00 for schools, property and net loss of tax revenue. (Def. Ex. 37). Subsequent to the award, it was discovered that the City Charter did not allow the issuance of general obligation bonds to pay for the costs of annexation. (Tr. B 19-20). Consequently, the City rejected the Henrico annexation award because of the prohibitive cost on March 8, 1965. (Tr. 691, B 12).

**Interim Period:**

Following the rejection of the Henrico annexation award, City officials contacted officials of Chesterfield County to discuss the dormant Chesterfield case, now

some four years stale, (it having been filed at the same time as the Henrico suit) in order to effect a compromise of the pending suit. (Tr. 92, Tr. 146). The sole basis for negotiation with the County officials was the number of *white citizens* they could expect to receive. A base figure of 44,000 was proposed by the City. (Tr. 151, 152, Tr. 94-95).

These negotiations bore no fruit.

November 5, 1965, the City revived the dormant suit, which was dismissed on March 25, 1966.

The appeal took a leisurely course, consuming 17 months and 14 days, before a decision was handed down by the Supreme Court of Appeals of Virginia on September 8, 1967, revising the dismissal. *(City of Richmond vs. County of Chesterfield,* 208 Va. 278 [1967]).

The parties agreed to a moratorium on proceedings through June 15, 1968, while the Virginia General Assembly was in session.

Trial on the merits was begun September 24, 1968.

**Contemporaneous Events During the Interim Period:**

There has been a long history of racial segregation and discrimination in the City of Richmond. By various devices in the past, black citizens have been restricted in their ability to participate fully in the political arena by official and unofficial limitations on their voting and political participation. (Tr. 9, 12, 16, 17, 18, 19; Thornton testimony).

Vast changes were being wrought in the voting strength of the black citizens of Richmond during the interim period growing from 4,000 Negro voters in 1956 to 35,000 in 1970. (Tr. 14).



Two political forces began to emerge. Richmond Forward was the white voter organization. The black voter organization was known as the Crusade for Voters. (Tr. 9). Crusade for Voters of Richmond, Virginia, is an unincorporated association composed primarily of black voters, which has been active for two decades in representing and asserting the views of Richmond's black citizens, especially in securing equal voting and other rights (See Tr. 9-11, 20). The 1966 Councilmanic elections were the first held after lifting of the poll tax. (Tr. 25). Voting patterns in the City of Richmond have always followed racial bloc voting and so continue today. (H 544, H 545, H 583, H 584). For the first time two candidates not supported by the white voter organization but by the Crusade for Voters were elected to City Council.

The Richmond Forward organization had an analysis of the black growth made. (Pl. ex. 5a). The rapid and effective growth of the black voting power was known to the white voter organization which conducted surveys and analysis of the 1966 and 1968 elections. (Pl. ex. 5b).

Legislation was introduced in the next legislative session (1968) to force merger of Richmond, Henrico and Chesterfield by the formation of a commission later known as the Aldhizer Commission. (Tr. 663, 209, 223).

This commission considered its role that of preventing Richmond from becoming black controlled by increasing the number of white voters in the City through forced merger. (Tr. 221, 212, 214, 217, 218, 220, 221, 223.)

Just prior to he first meeting of the commission the 1968 Councilmanic elections were held and the black citizens again increased their representation, this time to three members. (P. ex. 39: Tr. 210).

City officials urged merger of Chesterfield and the surrounding counties through the commission, expressing fear of a black takeover by at least the next Councilmanic election scheduled for 1970. (Tr. 21, 213, 216, 223).

**The First Chesterfield Trial on the Merits:**

During the summer of 1968, the annexation court suggested to he parties that they compromise the case by settlement agreement. (Tr. 612, 614).

Meetings had been continuing on an irregular basis since 1965 for this purpose. In all meetings, the City maintained a consistent position that required all negotiations to center and be concerned with the number of people that the City would receive by settlement. All economic, geographical and other considerations were simply not discussed or were brushed aside. In the words of the City Manager, the City had to "balance the population." The acceptable minimum number remained relatively constant at 44,000 people. The City was careful to ascertain from the County racial percentage figures in its negotiations. The meetings bore little fruition. (Tr. 92-112; 146-179; 584).

On January 9, 1969, the presiding judge declared a mistrial and disqualified himself. (Tr. 111).

**Events Between the First and Second Trial:**

Shortly after the mistrial, a special session of the Virginia Legislature met to draft and adopt a new constitution for the State. The Aldhizer Commission introduced a bill commonly referred to as the Aldhizer Amendment creating a third and new method of increas-



ing the population of the City. The Amendment would allow the state legislature to expand Richmond every ten years. (Tr. 117). Also passed during this legislature was a bill amending the City Charter of Richmond to allow general obligation bonds to be used to pay for costs of annexation. (Tr. 40, 42, 64-66).

City officials lobbied extensively for the Constitutional Amendment on the ground that should the Amendment fail, the City would go black, i.e., the plaintiff class would elect sufficient representatives to control the City by at least the next election scheduled for June of 1970. (Tr. 222, 223, 143).

The Aldhizer Amendment passed but had to be passed again at the next session (1970) before becoming law. (Tr. 223).

Subsequent to its passage, negotiations resumed between the heads of the Richmond City government and the Chesterfield County government to seek a compromise and the negotiations continued into the second trial on the merits.

No line was actually drawn until the Mayor of the City, Mr. Bagley, had assurances that at least 44,000 white people would be given up by the County. On May 15, 1969, Mr. Bagley and Mr. Horner, chairman of the County Board of Supervisors, drew a line (called the Horner-Bagley Line) which encompassed the required number of people. (Tr. 120, 174.)

At the time the agreement was formalized, the City Council and the Mayor had no information by which they could evaluate in any respect a compromise line agreement, other than its size and the number of people it contained. (Tr. 119, 120, 172, 178, 194, 234, 319-21, 356, 428, 445, 524, 575, 577, 581, 582, 584, 585-86,

710, 711; B 148, 155, 156, Pl. ex. 13 and 15; Memo op P. 11).

Mr. Talcott, the City Boundary Expansion Co-ordinator who gathered and had available all information concerning vacant land, economics, tax, schools, utilities, etc., was not consulted for any information whatsoever concerning a compromise by either the Mayor, the City Council, or the attorneys in the suit, until after the compromise had been reached. In fact, Mr. Talcott was not even aware such a compromise had been reached until some eleven days after the fact. (Tr. 436).

A former councilman, knowledgeable in City affairs, head of a leading regional financial firm intimately connected with municipal finances, and who had participated in almost all compromise negotiations prior to formulating the Horner-Bagley Line, argued strenuously against the agreement on the grounds that the agreement gave the city no vacant land and nothing but people. (Tr. 34, et seq.).

**The Compromise Annexed Area Is and Economic Loss to the City**

The area itself contained almost exclusively, developed, residential land, without any appreciable business or industrial expansion room, immense utility problems, requiring costly outlays (28.3 million dollars over five years) (H 695), and otherwise did not improve the expansion or economic position of the City. *Only 6 1/4% of the total land in the compromise area could be developed.* (H 693). The rest was either swamp, land fill or economically unsuitable. (H 692) (City ex. 16). As Judge Butzner of the Fourth Circuit stated:



> ". . . the description of the annexed area, especially its paucity of vacant commercial and industrial land for expansion, supports the District Judge's finding that the compromise was a 'purposeful devide to further racial discrimination'."

Not only did the physical property received fail to solve any of the needs cited by the City as a basis for annexation, the compromise (by the City's own figures) (See Interrogatories to City, this cause, [H 690]) was and remains an economic loss to he City. The per capita cost of government is $531 (H 693). Multiplied by the 50,000 present inhabitants (H 693) of the area, it costs the City 26.5 million dollars to govern the annexed area; not including the capital outlays of 5.66 million dollars per year over a five year period, for a grand total of 32.16 million dollars a year. In the same area the former City Manager, Mr. Kiepper, estimated total revenues of 14.5 million dollars for 1971-72 (H 694). The total *loss would thus equal 17.66 million dollars per year.*

The City has actually spent only 7 million dollars in 2 1/2 years of the 28.3 million dollars ordered spent on capital outlay, (H 695) or roughly three million dollars a year. The County received 2 3/4 million dollars in taxes from the area in 1969. The City financial report put the figure at 7 million dollars (H 694). Real estate is one-third of the total revenues, or 21 million dollars in revenues from the area as opposed to the City Manager's estimate of 14.5 million dollars. Add the reduced capital outlay of 3 million dollars to the costs of government at 26.5 million dollars and the most conservative cost is 29.5 million dollars, against the most generous revenue of 21 million dollars. Still, this results in *an annual loss of 8.5 million dollars per year.* (H 694).

**The Appeal Problem**

At all times, and in all such meetings leading to the compromise, the Mayor was in constant contact with the six Richmond Forward Councilmen for authority. City representatives, however, systematically exluded at all meetings and conferences all council representatives of the black citizens, who knew nothing of the compromise, nor of the policy questions involving it, nor the Aldhizer Amendment until after they became public knowledge. The exclusion continued through the trial of Holt I to the extent that even the attorneys for the City failed to consult or advise them on any facets of the respective cases. (Tr. 64-68, 69-71, 81, 102, 215-216, 226, 227, 241, 350, 353, 423, 424, 433-35, 563, 567, 570-72, 611-14, 619-21, B 39, Memo op. P. 8).

Time was now of the essence. (Tr. 110-111, Memo op. P. 11). Under Virginia Appeal procedure, appeals have four months in which to be filed and normal procedures required a total of five months before the appeals court would be in a position to decide if it would hear the appeal. (Rule of Supreme Court of Appeals, Rule 5:4, Va. Code § § 8-475 & 8-463). If a Court decision was not reached by July, the appeal could well run into 1970 on procedural steps alone, before a decision of any sort could be rendered. The trial was still proceeding and all parties agreed it would be the end of June before the parties rested, with the intervenors yet to be heard.

In Virginia, annexations can only take effect on the first day of each year. If delayed, the annexation would not become effective until after the next scheduled election in 1970. (Tr. 649-50; Memo op. P. 9).



White representatives were fearful that should they lose control of Council, a black controlled council would drop the case, or refuse to accept the award of the Court or the compromise. (Tr. 23, 25-26).

Accordingly, on June 11, 1969, Mr. Bagley and his attorney, Mr. Davenport, met with Mr. Horner and his attorney, Mr. Thornton, to firm up the agreement, for the expressed purpose of assuring the annexation took effect January 1, 1970, so that the newly acquired white citizens could vote and protect white control of the next scheduled election for City Council set for June 1970. (Tr. 172-179).

It is significant to note that as early as August of 1971, Attorneys for the City, Edwards, Mattox, and Davenport, knew of the testimony surrounding the compromise and the Aldhizer hearings and the part they played in them. Yet these key witnesses, whose involvement traces from the very beginning, have remained in the Courtroom in Holt I and II and the instant cause and failed to offer themselves as witnesses at any point to rebut or contradict this evidence, when they, of all parties could have been expected to produce the least self-serving testimony, and today remain so cloaked in silence.

The testimony of some members of Council that they were not aware of the "no-appeal clause", nor of the political realities which demanded it, is simply not supported by the record and is obviously not credible in the record or consistent with their positions or their prior activities. (Tr. 649, 650; B 182-83; Memo op. P. 10).

**The Decision**

The second annexation trial had begun the same day the Horner-Bagley Line was agreed upon, May 15, 1969.

The Court itself had allowed racial testimony and was aware of the City's fear of a growing black population (136-138, Tr. 642-43), as evidenced in its opinion when it stated: "Obviously cities must in some manner be permitted to grow . . . in population or they will face disastrous social problems." (Def. ex. 20 [a]).

The Court also recognized that it "exercises not only judicial, but also some legislative functions." (Def. ex. 20 [a]). The Court noted that compromise was unprecedented in an annexation suit and stated that it was not bound by such legally, but was so bound in practice when it said:

> "After mature consideration, we feel that the agreement is entitled to great weight. It must be remembered that the parties to the agreement perform the legislative functions of their governments as duly elected representatives for the people. When they decide that their constituents are benefiting by an action, such a decision should not be treated lightly . . . The acquisition of . . . some 43,000 people would solve many of the City's problems both now and for some time to come . . . In sum, we believe that the boundary line set forth in the agreement should be the annexation line and that all terms and conditions specified should constitute the conditions of annexation *verbatim*, and we so adjudge and decide." (emphasis added).

Thirteen days prior, the Court had agreed to the compromise in a secret conference, saying, "let us hear the protestors [intervenors] and then you can tell us what your agreemen^ is and *we can make our decision accordingly*, and in that way the intervenors won't feel like they have been kicked around or left out . . . " (Def. ex. 20 [a] P. 3234-20).



A secret meeting where the Court itself recognized the impropriety of what it was doing when it said, "I just don't want the press getting hold of what we have been talking about in here because the whole thing will just – it would be wrong." (at P. 3234-19 Annexation transcript).

**The Appeal:**

The notice of appeal was filed by the intervenors on the last permissible day, September 10, 1969. (Def. ex. 24). The Petition for a writ of error was filed five days before the last deadline on November 7, 1969. The City's brief in opposition was filed on November 12, 1969, the reply brief on November 20, 1969, a Thursday. The next day counsel were notified to argue the following Monday afternoon on November 24th. The Court denied the Petition on November 26, 1969.

A stay was filed for by the appellants on December 19, 1969, and denied that same day. An application for a stay was then made to the United States Supreme Court which was denied by Mr. Justice Douglas on December 31, 1969.

The following day, January 1, 1970, the Annexation took effect.

**The Next Election:**

On June 10, 1970, a Councilmanic election was held which included the newly annexed voters. The black citizens elected three representatives. Had the annexed votes not been counted, four representatives of the black citizens would have been elected giving them fiscal

control of the City Council (appropriation measures must be approved by at least six votes). (Tr. 27, 78-79; Memo op P. 9).

### 3. Findings of Fact in Holt I

The Court below made many findings which were based on totally uncontradicted evidence in the trial by the City of Richmond and which remain uncontradicted today.

a. In 1961, an unsuccessful attempt was made to merge the city and the county of Henrico . . : (Tr. 366 uncontradicted). The negro votes were opposed to any merger or annexation, obviously recognizing the consequential dilution of their anticipated emerging solidarity of voting strength. (Tr. 35, P. 4, 53-54, 40, 42, 238, 338-339).

b. The Negro citizen was (in 1960) hampered by restrictive laws and conditions . . . which were . . . effective impediments to fully exercising and utilizing rights accorded all citizens under the Constitution of the United States. (Tr. 12, 16, 17, 18, 19) (memo op. P. 2).

c. The City's suit against Henrico was finally culminated some three years later (March 1965) by rejection by the City . . . of the Court's award . . . [of approximately 45,000 people, the overwhelming majority of whom were white] . . . (Tr. 634, 691, Def. ex. 37). (Memo op. P. 3).

d. The period ensuing from the date of the filing of the original annexation suits against the countries had brought vast changes in the voting strength of the Negro community (Tr. 23-32, 36). The poll tax had been removed as a requisite to voting, (Tr. 21) and much



encouragement had been accorded the Negros to exercise their right of franchise – the evidence shows an increase in Negro voting strength. (Pl. ex. 5 [a] [b], 3 [a-n]) (Memo op. P. 3).

e. The early and middle 1960's brought with them two emerging political forces in the City . . . Richmond Forward [was] a predominantly white organization . . . (Tr. 25). The Crusade for Voters . . . encouraged and assisted qualification of Negro votes and . . . did and do endorse certain announced candidates. (Tr. 10, 11, 228, 333, 338, 395, 559 – Pl. ex. [a] [b], 3 [a-n]) (Memo op. P. 3).

f. The record abounds with evidence pointing to a dramatic awareness, certainly by 1968, (Tr. 22, 47, 48, 334) by any reasonably knowledgeable person, of the increasing political effectiveness of the Crusade. (Pl. ex. [a] - [n], Tr. 42-44, 23-32, 334, B 22-23, 690 - Pl. ex. 5 [a] [b]) (Memo op. P. 4).

g. The annexation of a part of Chesterfield County, which came to pass January 1, 1970 . . . resulted in a dilution of the Negro vote . . . (Memo op. P. 4).

h. During the pendency of the lawsuits versus Henrico and Chesterfield efforts were made to effectuate a compromise agreement. (Pl. ex. 32) (Memo op. P.4). (The record is too replete to list all record references.)

i. City Council's make-up took some changes, and by 1968 there were three members who were not in sympathy with the views of the other six majority members in reference to boundary expansion. The views of the three minority members, one of whom was a Negro, were generally considered by the majority to be representative of the views of the Negro community. (See all cities in #25) (Memo op. P. 6-7).

j. In the meetings between City and County representatives between 1965 and the culmination of the Chesterfield suit, the racial make-up of the population which the City was to receive was discussed. (Tr. 94, 95, 98-99, 100, 102, 103, 125, 151, 152, 171, 198, B 152-158, 598, 599, 600, 605, Pl. ex. 11, 12, 27, 28, 32) (Memo op. P. 7).

k. Much of the expressed general concern as well as other more specific statements of at least certain city officials was inspired by a fear of a shift of control of the City's legislative body to members of the Negro race or those supported by the Negro voters. (Tr. 98, 95, 115, 126, 143, 152, 163, 164, 165, 220-221, 240-41, 245, 249, 250, 251, 256, 257, 274, 296, 347-48, 690, 717, Pl. ex. 32) (Memo op. P. 7).

l. By 1968 the Legislature, primarily at the behest of the City, created a commission to study and recommend ways of alleviating . . . the city's pronounced need for expansion. (Tr. 80, 139-40, 162-63, 209, 210, 663, 668, 680, 681, 682, 690, 169). The evidence before the Court shows a concern not only of officials of the City and County, but of State officials as well, that the City of Richmond not become a City of the old, the poor, and the black. (Tr. 637, 638-41, 643, 646, 647) (Memo op. P. 7).

m. City officials expressed to at least two of the members of the State appointed commission . . . that with the ever increasing Negro population of the City that one of the issues was who would govern the City. (Tr. 115, 143, 210, 211, 212, 213, 219, 220, 221, 240-241, 245, 681, 682-87, 690). (Memo op. P. 7-8).

n. The evidence is uncontradicted that one of the city officials designated to encourage state action to expand



the city's boundaries asserted as one need for prompt action on the part of the State Legislature that the 1970 Councilmanic elections were approaching, and expressed a fear of the Negroes prevailing. (Tr. 110, 111, 164, 143, 210, 211, 212, 213, 219, 220-21, 308-304, 312, 643, B 185, 186, 668, 675, 681-87, 690, 604, 622, 623, 625, 629, 635, 673, Pl. ex. 14, 25, 24) (Memo op. P. 8).

o. The majority felt it necessary to exclude at least three members of Council from participating in certain discussions concerning this particular phase of the City's business [boundary expansion]. (Tr. 64-68, 69-71, 81, 102, 215-216, 226, 227, 229, 241, 350, 353, 423, 424, 433-35, B 39, 563, 567, 570-72, 611-614, 619-621) (Memo op. P. 9).

p. By 1969, the Negro vote in the City was beyond question a powerful influence. The legislative body of the City, while bound generally by a majority vote of its members, required in some instances a two-third vote for passage of certain matters. (Tr. 27, 78-79) (Memo op. P. 9).

q. Any delay which would result in a failure to implement any annexation decree by January 1, 1970, would result in at least another year's further frustration, since Virginia law makes all annexation decrees effective on January 1. (Tr. 649-650) (Memo op. P. 9).

r. An appeal by Chesterfield of the anticipated decree would obviously have precluded any dilution of the Negro voting power long enough for it to vitally effect the Councilmanic election of 1970. (B 182-83, Tr. 649, 650, see finding 22) (Memo op. P. 9).

s. At least one of the factors leading to the City's acquiesence to the compromise was a motivation to thwart any potential threat created by the rapidly

growing voting strength of the Negro segment of the polulation. (Tr. 40, 42, 53-54, 67-69, 78, 347-48, 450, B 23, 26, Tr. 580, 625) (Memo op. P. 10).

t. A polarization of the two major political factors in city elections was emerging. To suggest that such political polarization of the racially different groups was not a factor considered by elected officials whose election could to a reasonable degree be attributed to the respective organizations is to ignore the obvious. (Pl. ex. 5 [a] [b], Tr. 26-34, 332, 333, 394, B 61, 91, Pl. ex. 3 [d]-[n]) (Memo op. P. 10).

u. The parties to the annexation suit had been encouraged by the Court to explore the possibility of an amicable adjustment of the pending matter. (Tr. 96, 106, 122, 313, 544, 612, 614) (Memo op. P. 11).

v. Timing, however, was of the essence to the City by 1969. (Tr. B 182-183, see findings 22, 23, 30, 31) (Memo op P. 11)

w. While the Mayor had some general knowledge of the areas and population . . . he did not have the detailed information required to effectively evaluate any tentatively agreed upon line except for the size of the area and the fact that there was a sufficient number of white population which could reasonably be expected to dilute the potential Negro vote so as to preclude legislative control by that segment of the population in 1970. (Tr. 119, 120, 172, 175, 178, 194, 234, 319-321, 356, 428, 445, 524, 575, 577, 581, 582, 584, 585-87, 710, 711, B 148, B 155, B 156, Pl. ex. 13, 15) (Memo op. P. 11).

x. Timing of the compromise was tied to the immediate future political and racial control of the city's legislative body. (B 34-39, see findings 29-31) (Memo op. P. 12). As part of the compromise agreement, it was



understood that Chesterfield would not appeal the annexation decree, embodying the compromise agreement, and efforts to discourage appeals by intervenors would be made by the Chesterfield Board. The foregoing understanding was in order to assure an unquestioned white majority for the upcoming Councilmanic elections . . . [by permitting] the annexation to become effective at a time so as to deliberately dilute plaintiff's class vote for the Councilmanic election of 1970 . . . (Tr. 110, 111, 119, 178, 194, 324, 581, 582, 584, 585-87, 630, 631, 640-41, 650, Pl. ex. 26) (Memo op. P. 12).

y. Only the presence of Negro voting power, which was on the verge of expressing itself sufficiently as to threaten the election of whites in the upcoming councilmanic elections and which voting power the officials wished to impede solely because of race, prompted the city to agree to accept less territory and less tax producing properties than the city officials believed they would acquire by way of an uncompromised lawsuit. (Tr. 230, B 36, 38) (Memo op. P. 13).

z. That portion of it [compromise] having to do with agreement not to appeal, was conceived and operated as a purposeful device to further racial discrimination by way of diluting the vote of the Negro, and this is constitutionally impermissible. (Tr. 230, 257, B 168, 630, see entire record) (Memo op. P. 14).

**4. The Remedies**

**The Inadequacies of Ward Plans a a Remedy**

The testimony elicited in the October 15-17 hearing by the City and the Crusade establishes that their respective

ward plans are unreasonable and ineffective to cure dilution and incapable of curing the impermissible motive or purpose.

The City's Ward Plan is further unreasonable in that it is designed as a temporary remedy until such time as Section 5 of the Voting Rights Act expires. A referendum held under the diluted at-large system would be held in order to allow the abandonment of the ward system. (H 184, Holt ex. 1).

The record amply demonstrates that the City's own Ward Plan (City ex. 15) does great violence to its self chosen criteria of boundaries, neighborhoods, etc. (H 144, 150, 158, 159, 174-177, 492, 496-97, 505).

The City Plan reflects no political considerations. (H 433). The communities of interest are defined by the City as being concerns with facilities and services (H 429) or that needs-services are another way of saying income, black areas, racial. (H 433). To draw voter districts, these need-services would be the issues motivating voters and yet the City Plan was not drawn with these considerations. (H 483, 485, 489, 490).

The City Plan had as one of its basic sources of creation, a desire to avoid de-annexation. (H 186).

In the context of past discrimination and the invidious racial motivation, neither City or Crusade Plan, as required by the Voting Rights Act, cures the impermissible purpose.

Nowhere in the record is there any explanation or supportive evidence to show how purpose is cured or even affected. The ward plans leave unresolved the dilution itself without reaching the impermissible motive.

In that by their own terms, the ward plans leave unchanged the dilution in any substantial degree (Crusade) or merely make the dilution worse (City), they are ineffective. In that they do not reflect logical and generally acceptable criteria, they are unreasonable. In that they leave untouched the question of motive/purpose, they are both ineffective and unreasonable.



The City's Ward Plan does not cure any of the dilutive effects of the annexation, but rather focuses that dilution in the "swing" ward (the four black and four white wards cancelling each other out) (H 613), Ward H.

Thus the fight for political control centers in Ward H. The racial percentages in Ward H on a general population basis are 59.1% white and 40.9% black. (H 615) (City ex. 15-19). Prior to annexation the percentages were 52% black and 48% white. After annexation, the black percentage was diluted by 10 percentage points to 42% black. The City Ward Plan thus dilutes even more than the annexation itself. (H 616)

The Crusade's political expert showed an even greater dilution by analyzing the white-black percentages in Ward H for voting age population. There the black percentage was 38.5% or 13.5 points below the pre-annexation percentage. (H 616).

The net effect then under the City's Ward Plan is to reflect even greater dilution than that caused by the annexation itself.

The Crusade's Ward Plan fails to reflect any appreciation of geographical, historical or social considerations. (H 706-710 Howe Todd). The Crusade's Plans further fail to cure the dilutive effect when judged by their own political expert. Vice Mayor Marsh stated a plan would have to show five black wards to effect a satisfactory resolution (H 618). He later admitted the Crusade Plan

would not assure five black wards, (H 621) and in the alternative, he would perfer de-annexation.

Five black wards tend to disenfranchise white voters. (H 610).

Criteria chosen by both the City and Crusade are subject to constant change (H 593), requiring continual and burdensome adjustment. (H 593).

**De-annexation – Effective and Reasonable Remedy**

Where the cause of dilution was a boundary expansion adding 47,000 white people to the general population, the most effective cure of the dilution is to remove the cause itself, i.e., exclude the 47,000 people from the general population. Outside the single issue of reasonableness, no party disputes that this is the most effective means of curing the dilution. (H 190, 506, 507, 618).

Where a boundary expansion was initiated and carried out as a purposeful device of racial disenfranchisement, any measure of relief which rewards the invidious purpose is by definition ineffective.

Contraction of the impermissibly expanded boundaries to their prior limits leaves no reward to the racially motivated expanders.

Thus a return to prior boundaries effects the most effective cure to dilution and the *only* cure to racial motive. Further, such a measure remains consistent with the intended effect of Section 5 of the Voting Rights Act to prohibit expansions *unless* free of impermissible effect and impermissible motive.

Contraction of the City boundaries to pre-annexation limits is not a voyage upon unchartered seas. It is a familiar concept to the parties in general and to Chesterfield County and Richmond in particular. Chesterfield has undergone several boundary contractions, i.e., de-annexations, in recent years, the latest involving the same territory which is the subject matter of this dispute. (H 675). The County Administrator, for 25 years, qualified as an expert in local government, (H 673 et seq.) and in the mechanical boundary contraction. (H 675, 679, 680). His testimony went unrebutted and uncontradicted.



To be reasonable, boundary contraction must lend itself to speedy determination of the financial equities, administrative methodology of transfer and nonburdensome workable resolution of disputes which could arise. It took two weeks for the parties to determine the financial equities in the original City expansion-County contraction (H 687). It would take no longer than thirty days to again determine the financial equities administrative methodology of transfer and effectuate full transfer of governmental services. (H 683, 684, 687). The state annexation court remains in session under state law to act as arbitor for the resolution of any issues which would arise from the annexation, and is, therefore, the proper arbitor for resolution of any issues arising out of the boundary contraction. Being existent, local operative machinery, its utilization would be nonburdensome.

To be reasonable, there must be no disruption of governmental services, requiring, therefore, a corresponding ability of the County to assume these services financially and administratively. Chesterfield County has 18 million dollars in the bank, pursuant to a recent sewer bond sale, 10-12 million dollars due from the State Water Control Board, 4-5 million dollars in the water fund, 1 million dollars of uncommitted revenue sharing, 12.7 million dollars of authorized school bond issue, and a

normal bank balance of 20 million dollars at all times. (H 688-689). All Chesterfield capital outlays with the exception of schools and utilities are paid from current revenue (H 689). Bonds issued by the City for capital outlays could be assumed by the County. (H 689). The City has spent only 7 million dollars in capital outlays in 2 1/2 years (H 695). The County possesses sufficient financial ability to reassume control. Administratively, the County is amply prepared to assume all services: the county school system is innovative, advanced and capable of reabsorbing the children (H 682); the County would have no problem utilizing the City constructed fire stations, and has just expanded its fire department in personnel and equipment (H 682). The City uses a different hose connection thread than the rest of the County, but converters could be carried on trucks until the threads were replaced. (H 686-87). The County Police Department has a waiting list and sufficient manpower with initial overtime scheduling to provide protection during its expansion (H 683). The garbage and trash collection is handled now by the same private contractor previously contracted by the County and would continue after transfer (H 684). The County has a better water supply than the City and could use almost every waterline installed by the City (H 685-86). The County can use every foot of sewer line installed by the City; most of the sewer lines installed by the City were on County developed plans (H 686). The records of utilities, assessments, taxes, etc. of the area are computerized and can easily meld from the City to the County computer, while continuing normal governmental functions (H 685). The County has doubled the size of its jail, increased the mental health program and would experience no diffi-



culty in the administration of jails, courts, probation, mental health, welfare or solial services in the event of transfer. (H 691). Chesterfield County is willing to reassume governmental control over the subject area. (H 697, Pl. ex. 37, Holt ex. 2).

To be reasonable, there must be no substantial economic deprivation to the City and no corresponding unjust enrichment to the County. The County does not expect to be enriched by an order of de-annexation. (H 682). The City has spent only 7 million dollars in the annexed area to date, with 21.3 million which must be spent within the next 2 1/2 years, (H 695) and has an *annual net* financial loss of 8.5 million dollars to 17.66 million dollars from the area. (H 694-95). Of the total land received in the annexation, only 6 1/4% is vacant land even capable of development. (H 693). The return of the area would thus save the City at least 8.5 million dollars per year of operating loss, 21.3 million dollars of required capital outlay, and would realize bond assumptions and cash reimbursements in excess of 7 million dollars. In light of the inconsequential growth potential of the area, the City would economically benefit by a return of the area to the county.

In the context of the Voting Rights Act, the black Vice Mayor of the City of Richmond and member of the Crusade had these observations when questioned by the Court about the problems of a de-annexation:

> " . . . I think that these inconveniences and these other things [losing land, tax, schools] should not be permitted to overcome the Voting Rights under the Constitution . . . I think that *having a territory in the city would not help the city that much,* if the priorities of the city are not based properly in

satisfying the substance of the Voting Rights Act. [emphasis supplied].

I think that *having extra territory* with the priorities fixed as they were in the past, *would not be in the interest of the black person.* [emphasis supplied] (H 619-20).

Contraction of the City boundaries, i.e. de-annexation, is a reasonable remedy and a remedy which will effectively cure the dilution and furthermore cure the impermissible racial motive of the boundary expansion.

## CONCLUSIONS OF LAW

1. That 42 USC §1973c is the statute conferring jurisdiction upon this Court.

2. That §5 of the Voting Rights Act requires that a state or a political subdivision thereof may not put into effect in any way any change in voting qualifications or standards, practices, or procedures until it procures a declaratory judgment from the United States District Court for the District of Columbia that that proposed change does not have the purpose or effect of diluting the black citizens' vote.

3. Boundary expansions are changes in voting qualifications, standards, practices or procedures as contemplated under 42 USC §1973c. The change before the Court is an annexation and falls within the scope of §5, *Perkins* v. *Matthews* 400 U.S. 379 (1971). *Petersburg* v. *U.S.*, et al., U.S.D.C., (DC) #509-72, affirmed U.S. Sup. Ct. Nos. 72-865, 72-1215, 72-1594 (1973).

4. That a presumption of illegality relative to all changes in covered states exists, and, as such, "freezes the election laws", *Georgia* v. *U.S.*, 93 S. Ct. 1702 (May 7, 1973) until a clear showing by a preponderance of the evidence that burden has been overcome.



5. That the sought-after change carries a presumption of illegality and cannot be enforced in any degree or manner was established in *Allen* v. *State Board of Elections,* 393 U.S. 544, reiterated in *Perkins,* and most recently in *Georgia* v. *United States,* 93 S. Ct. 1702 (May 7, 1973):

> ". . . a State covered . . . *can in no way* amend its . . . laws relating to voting without first trying to persuade the . . . District Court . . . 383 U.S. at 356 (Concurring and ddissenting)" 93 S. Ct. 1702 at 1707.

6. The plaintiff, City of Richmond, seeks a declaratory judgment from this Court and therefore, carries a burden (placed upon it by the Act) of proving by a preponderance of the evidence that its annexation does not have the discriminatory effect and purpose aforementioned.

Specifically, the burden which must be carried by the City requires that the City prove the annexation:

(1) Did not have the *purpose* of denying or abridging the right to vote on account of race or color, *and*

(2) did not have the *effect* of denying or abridging the right to vote on account of race or color. *Petersburg,* supra.

7. Indeed, where boundary expansions are operated as a purposeful device to dilute the power of the black vote, they are subject to being absolutely prohibited as a violation of the Voting Rights Act of 1965.

8. The plaintiff City bears the burden of proof in demonstrating that its belatedly proposed remedy of a

ward plan more nearly eliminates the dilutive effect and purpose of the boundary expansion to the greatest extent reasonably possible than did the remedies proposed by the vigorous intervenors.

9. *City of Petersburg* v. *United States*, 351 F. Supp. 1021 (1972) stands for the proposition that a boundary expansion that is benignly conceived, concededly economically beneficial and desired by the overwhelming majority of a municipality's citizens may stand if the dilutive effect of that expansion is eliminated to the greatest extent reasonably possible.

10. Where the overwhelming evidence indicates, however, that the boundary expansion was not benignly motivated, where the economic benefits of the expansion are at best highly questionable and were not paramount in the minds of those who sought the expansion and where the great majority of the black voters have opposed that expansion, stronger measures to eliminate the dilutive effect of that expansion are mandated. Not only are stronger measures to cure the dilutive effect mandated, the Court must also deal effectively with the presence of the invidious motive for expansion.

11. The remedy appropriate to a benignly conceived and non-racially motivated boundary expansion, such as was adopted in *City of Petersburg* v. *United States*, 354 F. Supp. 1021 (1972) may not be appropriate to a boundary expansion which was conceived and executed as a deliberate and purposeful device to dilute the Negro vote, and this is especially true where another more effective remedy is reasonable, practicable and available.

12. In appraising the reasonableness of a remedy for vote dilution by boundary expansion, the presence of invidious purpose leading up to that expansion is highly



significant and, in the absence of compelling circumstances to the contrary, requires adoption of the most effective remedy even though this entails return of the captured territory.

13. The lapse of time from the boundary expansion until submission of that boundary expansion under the Act entitles the plaintiff to no special consideration in this case since the boundary expansion should not have been enforced until the aforementioned proofs had been made before this Court. *Georgia* v. *U.S.*, 93 S. Ct. 1702 (May 7, 1973).

14. The Mayor's admitted suggestion of a means of returning to the use of at-large elections upon expiration of §5 of the Voting Rights Act, suggests that there has been little growth in the sensitivity of the City's white political leadership to the integrity of the black citizens' right of franchise and requires that a remedy proposed by that leadership receive careful scrutiny.

15. A contempt for the integrity of the Voting Rights Act and the Court whose duty it is to uphold that Act would necessarily result from the adoption of a remedy for racially motivated vote dilution, if the circumvention of that particular remedy has been conceived and anticipated by the plaintiff City's white political power structure.

16. The remedy suggested in a case arising under the Voting Rights Act must be examined not only for its efficacy in meeting the present problem, but also with an eye toward preventing future such depredations by removing all possible reward for invidious motivation.

17. But for Justice Department's lack of zeal and belated entrance into this matter, its opinion would be entitled to weight. The record indicates an appalling

default on the Government's part in enforcing Section 5 of the Voting Rights Act, until prodded into some belated form of action by the Intervenors, Holt, et al., who have been forced to function as private attorneys general in this cause.

18. It would be naive in the extreme for this Court to view the dilutive effect of the boundary expansion as sufficiently remedial merely because the plaintiff City's ward plan concentrates the effects of that dilution in one "swing" ward.

19. The plaintiff City of Richmond has failed to meet its burden by demonstrating that its boundary expansion does not have the purpose or the effect of diluting the black vote. Nor has the City met its burden of demonstrating that its proposed ward plan rehabilitates or elevates the racially motivated and dilutive expansion to the standards of the Act and law which require that the most effective measure be implemented to eliminate both the purpose and the effect to the greatest extent reasonably possible.

20. The failure of the plaintiff City of Richmond to introduce any evidence tending to rebut the testimony of the Defendant Intervenor Holt's expert on local government concerning the effects and ease of de-annexation, compels the conclusion that it was unable to rebut such testimony.

21. The evidence in this record indicates that fear of de-annexation as a "mind-boggling" undertaking is a long maintained, but totally unsupported shibboleth.

22. The unrebutted and cogent evidence of the Defendant-Intervenor Holt is that de-annexation would be effective to cure both the impermissible purpose and effect of the boundary expansion and is both economi-



cally sound and wholly practicable. The Court cannot reject such uncontradicted evidence.

23. Partial relief as granted in *Petersburg* involved a benign annexation, transgressing upon the Act in effect alone. Partial relief in this case would cause inestimable damage to the Voting Rights Act by perpetuating a wrong of immense proportions on the City's black citizens without the slightest corresponding benefit to the City as a whole.

Where wrongdoing of this magnitude exists, the only effective relief is a vigorous application of the Congressional intent by serving notice that such future actions cannot be tolerated. The only effective remedy is to deny the Declaratory Judgment, enjoin the City from enforcing this annexation, and order elections to be held at the earliest reasonable date without the participation of the diluting annexed votes.

[Signature and Certificate of Service Omitted in Printing]

**N. Joint Stipulation By All Counsel that the Record of *Holt I* be Received in the Instant Case.**

[Caption omitted in printing]

**STIPULATION**

It is hereby stipulated between the parties to this case that the testimony and exhibits taken and introduced in the trial of *Curtis Holt, Sr.* v. *City of Richmond, et al.*, E.D.Va., Civil Action No. 151-71-R starting September 20, 1971, may be received and considered as testimony and exhibits in the trial of this case.

It is further stipulated that none of the parties, in making this stipulation, adopts any of the witnesses as its or his own witness.

It is further stipulated that none of the parties, in making this stipulation, waives the right to call additional persons as witnesses or to call as witnesses those persons who testified in the trial of *Curtis Holt, Sr.* v. *City of Richmond, et al.*, E.D.Va., Civil Action No. 151-71-R.

[Signatures omitted in printing]

ORDER

IT IS SO ORDERED.

/s/
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT JUDGE



**O. Joint Stipulation By All Counsel as to Other Elected Officials of Richmond.**

[Caption omitted in printing]

**STIPULATION**

The parties to this action stipulate as follows:

1. The following facts are admitted by all parties and shall be taken as true for the purposes of this action: That there are fifteen (15) elected officials in the City of Richmond, nine (9) of whom are members of City Council; the other six (6) are elected at-large and are as follows: Sheriff, Commonwealth's Attorney, City Treasurer, Commissioner of the Revenue, Clerk of the Circuit Court of the City of Richmond, Division I, and Clerk of the Circuit Court of the City of Richmond, Division II. No evidence of said facts other than this stipulation need be adduced upon the trial.

[Signatures omitted in printing]

Supreme Court U. S.

JAN 30 1975

MICHAEL RODAK, JR., CLERK

**APPENDIX**
**Volume II – Pages 261-534**

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

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**No. 74-201**

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CITY OF RICHMOND, VIRGINIA,

*Appellant,*

v.

UNITED STATES OF AMERICA and
WILLIAM B. SAXBE, ATTORNEY GENERAL, and
CURTIS HOLT, SR. *et al.* and
CRUSADE FOR VOTERS OF RICHMOND, *et al.*,

*Appellees.*

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JURISDICTIONAL STATEMENT FILED AUGUST 29, 1974

JURISDICTION NOTED DECEMBER 16, 1974

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## I. Transcript of Testimony from *Holt v. City of Richmond et al.*, 334 F.Supp. 228 (E.D. Va. 1971), (*Holt I*).

### A. Transcript from trial beginning September 20, 1971.

**1. Testimony of William S. Thornton:**

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[9] *WILLIAM THORNTON*, called on behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VENABLE:

Q For the record, Dr. Thornton, would you state your full name, age, address, please, sir.

A I am William S. Thornton. I am a podiatrist. I live at 2602 Brook Road.

Q Have you lived in Richmond long, Dr. Thornton?

A Except for my time in the service and the time away in school I lived in Richmond all my life.

Q Your age, sir?

A I am fifty years old.

Q Dr. Thornton, have you been politically active in the City of Richmond?

A Since 1956 I have been politically active, yes.

Q In what way have you been active, sir?

A In 1956 the Crusade for Voters was formed. I served as the first Chairman and the first President of that organization. Prior to that time there had been a committee in the City of Richmond to close public schools and the Crusade for Voters was formed as an outgrowth of that particular committee. At that time we found that [10] there were very few blacks

participating in political activities and that fewer than 4,000 voted in that particular referendum on January 9, 1956, so a group of us decided to found the Crusade for Voters. This was formed in 1956.

We decided the Crusade for Voters should be a non-political organization, non-partisan, and should not be affiliated with the Republican nor with the Democratic Party and that we would not field political candidates but would recommend to the voters the candidates that would benefit black people the most and who were the lesser of the evils for us. The candidates of course did not necessarily have to be black. It could be black or white as long as they were somewhat willing to uphold the Constitution of the United States and would give freedom to all black people regardless of race and creed.

Q Was the Crusade formed by a mixed group racially, or was it a black group?

A It was a black group that formed the Crusade for Voters.

Q Its orientation, sir, from 1956 until the present time, is it a black organization or a white organization?

A There are some white members of the Crusade for Voters, but it is a black organization mainly [11] and the leadership has always been vested in black people.

Q What office have you held in the Crusade since its inception in 1956?

A From 1956 until the present time, until this year, early in the year, when I resigned as a Chairman of the Board, I have been Chairman of the Board throughout those years. The first four years of the



Crusade for Voters I was also the President of that organization.

So I have served as President and as Chairman of the Board of the Crusade for Voters.

Q Dr. Thornton, could you give us a little more definition of just how the Crusade has operated in its time of existence? From 1956, what has the growth of the Crusade been both in its activities and its effect?

A Well, from 1956 until 1960 we were primarily interested in an educational job for the voters of the City of Richmond. We were educating them on the proper way to fill in a ballot, the proper way to fold a ballot, and just when to vote. We tried to educate them on issues arising during that time. So from 1956 until 1960 it was primarily a job of educating the public on what the Crusade was. We did this by organizing precinct clubs. We tried to organize precinct clubs into predominantly black precincts in the City of Richmond. These precinct clubs would in turn send two representatives to the Crusade for [12] Voters because in the Crusade for Voters we do not and we never have had a membership list that we have a mailing list for, but not a membership list. There are no dues or other requirements to be a member, to be on our mailing list.

Q Does the Crusade field the candidates, Dr. Thornton?

A We have never in the years that I was Chairman or President, we have never asked anybody to run for public office. We do not field candidates. We wait until the candidates are fielded, and then we recommend those candidates that we feel are the lesser of the evils to the voters.

Q Dr. Thornton, if I can take you back just a little bit, back to 1956, can you catalog for the Court the ability of the black citizens of the City of Richmond to participate in the political process. What have the changes been through the years up to date, and how the Crusade has worked with the black voter.

A In 1956 when the Crusade was formed there were many impediments placed in the way of a person who wanted to register to vote. We had a poll tax at that particular time that a person had to pay and had to pay for three years back in order to register. There were many impediments that were placed in the way of this particular [13] person because once he paid his poll tax he was assessed for other taxes in the City that he probably had not paid like personal property taxes and I personally know of persons who once they went down to register and to pay their poll taxes, they soon got a bill for $30.00 or $40.00 for personal property tax they had not been paying prior to this time.

* * *

Q Dr. Thornton, what was the need of the Crusade in Richmond?

A In 1956 we found there were less than 4,000 persons qualified to vote in the City of Richmond, and we wanted to introduce this so that black people could have some part of the political process in the City.

THE COURT: Excuse me, Doctor. You mean less than 4,000 –

A Black voters in the City of Richmond. So [14] that black people could have some voice in the politics of the City. There were no black people or very few black people on City committees. There were no



directorships of any City utility or service, and we felt that if we got into the mainstream of the political activity that we could at least give some of these people assignments on committees, probably directorships and additional jobs in the City.

Q How effective has the Crusade been? How are you doing now?

A According to the Registrar we have increased from 1956, from 4,000 voters, we have now over 35,000 black voters in the City of Richmond.

Q Dr. Thornton, I hand you a book that encompasses plaintiff's exhibits 1, 2, 3a, through plaintiff's exhibit 4.

* * *

MR. VENABLE: [15] Your Honor, the map I am referring to is plaintiff's exhibit 1 basically showing the City divided into voter precincts and in the Court's copy you will see four maps which correspond to the four overlays beginning with 1940 and taking every ten years, 1950, 1960 and actually 1971.

BY MR. VENABLE: Continued

Q Dr. Thornton, you have a copy in your hands. Have you had an opportunity to study this map?

A Yes, I have.

Q In your experience in working with voting patters and racial patters, housing in the City of Richmond, do you consider that map to be accurate, sir?

A I consider all of the maps to be accurate except in 1971 I think in Precinct 25 that it is a mixed

precinct probably with fifty percent white and fifty percent [16] black voters in that particular precinct.

Q Precinct 25, it is shown on the map as what, sir?

A As a white precinct.

Q If I can bring your attention back for a moment, Dr. Thornton, you were talking about the impediments which black citizens have had in participating in the political process. You talked about some of the formal impediments, poll taxes and so on. What informal impediments have black citizens in the City of Richmond faced as they seek or sought to enter into the political process of the City of Richmond?

MR. OTT: I object to the form of the question, if Your Honor please.

THE COURT: Overruled. Go ahead.

A I think some of the informal impediments would be for one thing moving the office of the Registrar up to the Mosque, from the City Hall itself. I don't remember exactly when it was moved, but certainly this was an informal impediment, that had a person who paid his poll taxes at the City Hall and would have to travel all the way to the Mosque to become registered. I think this was one of the informal impediments.

I think by not having any black people working in these offices were also impediments to black [17] voters in the City of Richmond because just not seeing a black friendly face in the registrar's office or in the tax collector's office certainly was an impediment to black people to register and vote.

Other things that caused black people to register and vote, there are some people on welfare, and the word was spread that if those persons registered to vote they –



* * *

[18] BY MR. VENABLE: Continued

Q Dr. Thornton, was it your understanding these remarks about which you were to testify a few mements ago, was it your understanding these remarks emanated from the City of Richmond, officials of the city?

A Yes. I had this impression that they did [19] emanate from City officials.

Q What were those remarks, sir?

A That if he registered to vote he would be taken off welfare.

Q Continue with your testimony, Dr. Thornton, about any other informal impediments which were placed on Negro participation in the political process.

A Certainly black people did not realize any benefits from voting. There were no black people on commissions or boards. There were no black elected officials in the City of Richmond since 1948 when Mr. Oliver Hill served on City Council. So they felt their vote was wasted, and I think this was an informal impediment, that they were not rewarded for their vote, as such.

Q In 1948, you said Mr. Oliver Hill was elected. He was a Negro?

A That is right.

Q Was he elected under the old ward system or under an at-large system?

A Mr. Hill was elected under the first City Manager type of government we had in the City of Richmond. This was just after the ward system in the City.

Q When was the form of city government and the electoral process changed?

A In 1948 it was the first election for [20] that.

Q It was the first election that followed it?

A Yes.

Q In the old ward system was there a predominately black ward?

A There was one predominately black ward known as Jackson Ward in the central section of the City of Richmond.

Q Are you familiar with the percentage of blacks living in Jackson Ward just prior to the changing from the ward system to an at-large system, sir?

A From what I have read it was close to ninety percent at that particular time.

Q Dr. Thornton, you have talked about the first four years of the Crusade being educational, from 1956 to 1960.

Let me ask you: Did the thrust of the Crusade change from 1960 on, from being educational to something else?

A I think that we changed in the Crusade after we realized that in order for people to register to vote, in order for people to take part in the political process, then we had to recommend candidates and become more active politically. We started in 1960 to actually [21] participate in all elections.

Q When was the poll tax removed as a burden to the black registration, sir?

A The first election for nonpoll tax payment was the Presidential election of 1964.

Q When was the first councilmatic election that was not under the poll tax?

A In 1966.



Q Doctor, if you will take the exhibits -- You notice plaintiff exhibit 2 sets out the census tabulations from 1930 through 1970.

What was the white-black ratio in the City of Richmond, sir, in 1940?

A In 1940, according to these exhibits and according to the census figures, there was sixty-eight percent white persons in the City and thirty-two percent nonwhite.

Q In 1950, sir?

A In 1950 the percentage was the same, sixty-eight percent white and thirty-two percent nonwhite.

Q Had the City expanded the boundary areas between 1940 and 1950, sir?

A We had annexation in 1942.

Q What is the racial percentage in 1960?

A In 1960, fifty-eight percent of the [22] population was white and forty-two percent was black.

Q At what point between 1960 and 1970 did the Negro population match that of the white population in the City of Richmond?

A In 1968 the population was fifty percent black and fifty percent white, in 1968.

Q If annexation of Chesterfield County had not occurred, sir, in 1970, January 1, what would have been the ratio of black and white in the City of Richmond in 1970?

A In 1970 without annexation, fifty-two percent of the population would have been black and forty-eight percent would have been white.

Q In actuality annexation occurred January 1, 1970. What was the percentage of whites-black in the City with annexation?

A The percentage in 1970 was the same as it was in 1960, fifty-eight percent white and forty-two percent black.

Q The percentage in 1950 was the same as the percentage in 1940. Is that correct?

A That is correct.

Q Between 1940 and 1960 and 1970, in those two spans, annexation occurred, did it not?

A That is right.

Q [23] What was the percentage of black citizens actually annexed by the annexation in 1970?

A 1.2 percent.

Q What is the exact figure of people?

A The total number of people, 47,262 persons were annexed.

Q How many of those were black?

A 555.

Q Calling your attention now to plaintiff's exhibit 3, a through m, the councilmatic tabulations for election, 1960, 1962, 1964, 1966, 1968 and 1970 – Have you had an opportunity to review these tabulations, sir?

A Yes, I have.

Q Do you find them to be accurate and correct?

A For the most part. There were one or two corrections I had.

Q When we get to them you can point them out to the Court.

Dr. Thornton, what has been the success of the Crusade at the time it changed its posture from one of education to political education, from 1960 to date?

A In the first councilmatic election of June, 1960, June 14, there were only white persons running in that



particular election, and those persons who were [24] endorsed or recommended by the Crusade for Voters, they all were elected to public office.

At that particular time there was the Richmond Citizens Association and they had seven of the nine candidates that the Crusade also recommended along with them. There were two independent candidates running that the Crusade also endorsed, Mr. Throckmorton and Mr. Garber.

Q May I stop you. Why would you recommend an R.C.A. candidate, sir?

A We recommend candidates because we feel that they would be favorable to black people in the city, and they just happened to have been the lesser of the evils.

Q Continue, sir.

A In 1962 the Crusade with two black candidates running, the Crusade was able to also recommend some candidates with R.C.A. and five of the candidates that were recommended by both the Crusade and R.C.A. were elected and one or two – two candidates with Crusade support only were elected. They were Mr. Heverly who led the ticket and Mrs. Herrick. Two of the Crusade candidates lost in 1962, who were black candidates, Clarence Newsome, getting 35.5 percent of the vote. In 1964 with R.F. in existence at that particular time –

Q R.F.?

A Richmond Forward, the R.C.A. had changed [25] its name to Richmond Forward, and this was a new organization that was being formed. They had asked Mr. Cephus, a black man, to run for City Council. The Crusade endorsed Mr. Cephus and also

Richmond Forward endorsed Mr. Cephus. We had two other black candidates running that the Crusade for Voters did not recommend, Mr. Eggleston and Mr. Charity, and Mr. Cephus became the first black Councilman since Oliver Hill in 1948.

Mr. Cephus was elected in 1964. The councilmatic election of 1966, five of the six candidates that the Crusade recommended were elected to public office, and at that particular time they had three black members of City Council, Mr. Cephus, Mr. Mundill and Mr. Henry Marsh. The three black candidates who chose to run were elected in 1966.

Q In the 1966 election was the poll tax on at that particular time?

A There was no poll tax in 1966.

Q This was the first time without it?

A The first election without poll tax.

Q How did the Crusade do in the black precincts in 1966? Before I forget – Is the Richmond Citizens Association or Richmond Forward at this time – Is that a white or black political organization, sir?

A I would consider it to be a white [26] political organization.

Q In reference to the black precincts in the 1966 elections, how did the Crusade do with its candidates as opposed to Richmond Forward's candidates?

A In the 1966 election, in the black precincts, predominately black, Mr. Henry Marsh, who was recommended by the Crusade, got 83.4 percent of the black vote. Mr. Cephus who was recommended by Richmond Forward and the Crusade got 77.2 percent.



Mr. Mundill who was recommended by Richmond Forward and the Crusade received 69 percent. Mr. Carwile who was recommended by the Crusade received 62.5 percent, and Mr. Bagley, who was recommended by both R.F. and the Crusade, received 54.1 percent. Mrs. Sheppard who was not recommended by the Crusade but was recommended by Richmond Forward received 42.1 percent.

Mr. House who was recommended only by the Crusade received 33.9 percent. Mr. Cubbie, an independent, received 33.6 percent.

Mr. Crowe who was recommended by Richmond Forward received 33.2 percent.

Q How many members are there on Council, sir?

A Nine members.

Q In the top nine slots in the black precincts, the rankings, how did you compare?

A [27] Five of the Crusade recommended candidates were in the first nine in the black precincts.

Q You are familiar with city government and how it works?

A Yes, I am.

Q How many members of City Council does it take to have effective control of Council on money matters?

* * *

A I think in appropriations, to be effective in appropriations, there is a need for six votes on the budget, on the appropriations.

Q Six votes?

A Yes, sir, to be effective.

Q Take a look at the split precincts in 1966, the mixed precincts.

Just dealing with the rankings in the first nine slots, how did your Crusade perform?

A Of the nine candidates the first nine, percentage wise, the Crusade had six candidates in the running.

Q In 1968, Dr. Thornton, were Mr. Mundill and Mr. Cephus running for office?

A In 1968 Mr. Mundill and Mr. Cephus did [28] run for office, yes.

Q What was their endorsement?

A Richmond Forward.

Q Did the Crusade endorse them?

A No. They did not in 1968.

Q Why?

A They were actually candidates of Richmond Forward, as such. At that particular time we thought that other candidates that we could recommend would be the better candidates for black people in the City of Richmond.

Q Turning to the black precincts tabulations in the 1968 councilmatic election, how did the Crusade perform?

A In 1968 in the black precincts Mr. Marsh recommended by the Crusade received 91 percent of the vote. Mr. Carwile, recommended by the Crusade, received 88.9. Mr. Carpenter, endorsed by the Crusade, received 85 percent.

Mr. Walter Kenney received 73.3 percent. Mr. Melton Randolph recommended by the Crusade received 65.8 percent. Mr. Cephus who was recommended by Richmond Forward received 23.4 percent. Mr. Mundill recommended by R.F. received 19.9. Mr. Bagley, by R.F., received 16.3 percent. Mr. Crowe received 15.5.



Q Out of the top nine how about the black votes in 1968?

A [29] In the black precincts the Crusade carried the first five candidates in all the black precincts.

Q Turn to the mixed precincts in 1969.

THE COURT: Mr. Venable, I want to be sure I am not misreading this. The last question was based on what? You may approach the witness.

MR. VENABLE: It is based on PX 31.

THE COURT: Did I understand you to say, Dr. Thornton, that the Crusade endorsed the first five? That is, by precinct?

A Yes, Your Honor. This is one of the mistakes I had mentioned in the book. We did recommend Dr. Carpenter at that time and the exhibit shows Mr. Carpenter was endorsed as a candidate but the Crusade did recommend Mr. Carpenter.

THE COURT: When you come across one of those would you let me know.

A All right.

* * *

Q Dr. Thornton, turning your attention to the mixed precincts in the 1968 election, plaintiff's [30] exhibit 3H, Your Honor –

A In the mixed precincts Mr. Carwile recommended by the Crusade received 66 percent of the vote. Mr. Carpenter who was recommended by the Crusade, and this is a change, Your Honor, to 57.5 and the sheet has independent, but he was recommended by the Crusade.

Mr. Marsh, recommended by the Crusade, received 55.4. Mr. Bagley, R.F., received 47.7 percent.

Q You had recommended Mr. Bagley in 1966?

A That is right.

Q Continue.

A Mr. Bliley received 46 percent of the vote, being recommended by Richmond Forward. Mr. Kenney recommended by the Crusade received 43.3. Mr. Crowe, R.F., 42.2. Mr. Forbe, R.F., received 40.6. Melton Randolph, endorsed by the Crusade, received 39.9.

Q Out of the top nine how many Crusade candidates were placed in the top nine in the mixed precincts of 1968?

A Five.

Q How many total did you recommend that year?

A Only five we recommended.

Q Where did Mr. Cephus and Mr. Mundill stand in the mixed precincts? What ranking?

A [31] Mr. Cephus ranked thirteen. Mr. Mundill ranked fourteen in the mixed precincts.

Q If I can take your attention back to plaintiff's exhibit 3S, how many Crusade candidates did you recommend in the 1966 election, sir?

A There were six.

Q Were there cross recommendations?

A Yes. Mr. Cephus received recommendations from Richmond Forward and from the Crusade, Mr. Mundill and Mr. Bagley.

Q Would you look at plaintiff's exhibit 3D which is the total results for 1966.

How many Crusade only, candidates that were endorsed only by the Crusade, made it in the top nine of 1966?

A There were two, Mr. Marsh and Mr. Carwile.



Q If you would look at plaintiff's exhibit 3G, which is the total result for 1968 – during which time you have dropped Mr. Bagley and Mr. Mundill and Mr. Cephus. How many Crusade candidates were elected?

A There were three, Carwile, Carpenter, Mr. Marsh.

THE COURT: That is another error?

A There is another error. Mr. Carpenter.

MR. VENABLE: He is listed as independent [32] and he should be Crusade?

A Yes.

BY MR. VENABLE: Continued

Q Calling your attention, Dr. Thornton, to plaintiff's exhibit 3M, the 1970 old city black precincts, the total vote from the old city, how many Crusade candidates had you endorsed in 1970?

A The Crusade endorsed nine candidates. The exhibit will show Mr. Shiro was an independent, but he was also endorsed by the Crusade.

Q In the black precincts in the City of Richmond, the old city, without annexation, in 1970, how did the Crusade fair in ranking?

A All nine of the candidates that the Crusade recommended came from the top ten.

Q What positions did those recommended by T.O.P. achieve in the black precincts of the old city in 1970, that is the Team of Progress?

A Mr. Bliley was the tenth person, and he was recommended by T.O.P. Mr. Levinston was nine. He received 44.6 of the vote. In tenth place, Mr. Bliley dropped to 15.3 percent of the vote.

Q The other T.O.P. candidates for this year, what rankings did they achieve in the black precincts?

A [33] Fourteen. Mr. Daniel is fourteen. Mr. Rennie, seventeen. Mr. Valentine, eighteen. Mr. Morris, nineteen. Thompson, twenty. Orendorff, twenty-one.

Q Take a look at plaintiff's exhibit 3L which shows the mixed precincts of the old city in the June, 1970 election.

A In the old city, June 10, 1970, it shows Mr. Carwile who had Crusade endorsement received 62.9 and was ranked first.

Q Give the rankings, Dr. Thornton, one through nine.

A Eight of the nine candidates recommended by the Crusade were in the first nine with Mrs. Jaquelin Taylor in eighth place.

Q Was Mrs. Taylor –

A She was not recommended. She was an independent.

THE COURT: Was Mr. Shiro?

A Mr. Shiro was recommended by the Crusade.

THE COURT: There is another error?

A Yes.

BY MR. VENABLE: Continued

Q Sir, take a look at plaintiff's exhibit 3N which shows the white precincts in the old city in the [34] June, 1971 election.

A The T.O.P. candidates took the first eight places. The ninth place went to Mr. Carpenter recommended by the Crusade.

Q Mr. Carpenter's race?

A Mr. Carpenter is white.

Q Take a look at the plaintiff's exhibit K which shows the total vote results without the annexed area.



How many Crusade candidates would have been elected but for the annexed area vote?

A There would have been four Crusade endorsed candidates elected in 1970 in the old city.

Q Leaving how many for T.O.P.?

A Leaving the balance of five T.O.P.

Q Take a look at plaintiff's exhibit J, 4, which is the election results of the councilmatic election of 1970 with annexation.

How many candidates did the Crusade actually place on City Council?

A The Crusade recommended and placed on City Council three candidates, Carwile, Marsh and Carpenter.

Q Under the old city without the annexed vote, who was the fourth individual who was not placed on City Council?

A Walter Kenney.

Q [35] His race?

A He is a black man.

Q Dr. Thornton, are you familiar with the events surrounding an attempted merger between the County of Henrico and the City of Richmond in December, 1961 when the vote was taken?

A Yes, I am.

Q Would you look at plaintiff's exhibit 4. Plaintiff's exhibit 4 is a tabulation of the vote by precincts in the City of Richmond in 1961. What percentage of the black precincts voted against merger?

A One hundred percent of the black vote voted against merger in 1961.

Q What percentage of the mixed precincts voted against merger?

A Sixty-two percent of the mixed precincts.

Q What percentage of the white precincts voted for merger?

A Ninety-five point seven percent of the vote was yes.

Q Dr. Thornton, from 1964 to 1966, the poll tax was dropped for city elections. Correct, sir?

A That is right.

Q Did the Crusade note any increase in its effectiveness from that date forward?

A [36] Yes, the Crusade did notice an increase in its effectiveness because more black people were voting in those elections, and it was easier to register to become qualified. In 1964 we had in the Crusade the greatest increase in black voters in the City of Richmond, when we were able to register 11,000 persons because of area registration and because of night hours the registrar held for the first time.

Q Was there a steady increase in voting strength and participation by already registered Negro voters from 1966 forward?

A There was a greater political awareness on the part of the black people because at that time we had some blacks elected to City Council, and I think they could see the result of their vote.

* * *

Q [37] Dr. Thornton, how many people ran in 1970?

A There were twenty candidates in 1970.

Q How many ran from the annexed area?

A I can see at least seven down this list I think that ran in 1970.

Q Your mention of four then was based on just a mere subtraction of the annexed area. Is that correct?



A Of the actual vote at that particular time when four of the persons would have been elected, who were recommended by the Crusade. Of course, had not the area been annexed one of the men who won, Mr. Thompson –

* * *

[38] Go ahead.

A Mr. Thompson, who lives in the annexed area, could not have been a candidate in 1970, and therefore we would have had probably another person elected in his place.

Q Dr. Thornton, let us take another question, another line here for a moment: From 1956 to present, what has your position been in the Crusade?

A Until the first of this year I was the Chairman of the Board continuously from 1956 to the present time.

Q Have you or any other elected officials, to your knowledge, ever been approached by any member of the city government from –

THE COURT: I am sorry. I did not hear.

Q Have you or any elected officials, any officials of the Crusade for Voters, ever been approached by the members of the city government of the City of Richmond to participate in committees or assignments within the governmental structure?

A I do not know of any person who is in an official capacity of the Crusade who has ever been [39] approached to serve on any committee for the City. I am including myself in this particular grouping here.

BY THE COURT:

Q How many persons do you have, Doctor?

A We have President, Vice President, Secretary, Treasurer, Chaplin, Research Committee, and various

other standing committees. None of these have been officially approached to serve on any committee.

BY MR. VENABLE: Continued

Q Have they in fact served on any committee?

A None have. As a matter of fact when Mr. Crowe was Mayor, Mr. George Purnell was President of the Crusade for Voters. Mr. Purnell and I went to see Mayor Crowe about various appointments. He asked us to give him the names of black people that we thought could serve on various committees in the city. Mr. Purnell and I gave Mr. Crowe, we sent Mr. Crowe a list of twenty-five persons that we thought could serve ably on committees and boards, and it is my belief that Mr. Crowe used this to exclude persons because none of those twenty-five were ever put on any boards or committees of the City of Richmond.

Q Dr. Thornton, I show you a plaintiff exhibit, number 29. Can you identify it for the Court, [40] please.

A (Viewing paper writing). This is a letter that was sent out on January 1, 1968, by the Crusade for Voters, to the members of the Richmond delegation to the General Assembly at the State Capitol in Richmond.

Q I call your attention to two points to which the Crusade addressed itself. Something about a bond issue and something about annexation. Would you read those into the record, with the numbers.

A Number eight, is, we oppose the amendment of Section 702 of the City Charter in order to permit the sale of bonds to cover annexation costs.

Q What is nine?



A We favor asking the General Assembly to endorse a moratorium on the annexation of Chesterfield County and Richmond.

* * *

Mr. Venable?

MR. VENABLE: Yes, sir.

THE COURT: We will take a brief recess.

NOTE: A brief recess is taken, after which the testimony is resumed as follows:

[41] BY MR. VENABLE: Continued

Q Dr. Thornton, when we took a recess, we were talking about plaintiff's exhibit 29 which was a letter.

MR. VENABLE: Your Honor, for your edification, we can pass it to you.

THE COURT: All right.

NOTE: A paper writing is handed to the Court.

THE COURT: Is this the original?

MR. VENABLE: That is the only copy we have, Your Honor.

THE COURT: It is the original exhibit?

MR. VENABLE: Yes, sir.

BY MR. VENABLE: Continued

Q The two recommendations that I referred to are what numbers?

A Eight and nine.

Q Dr. Thornton, what was the Crusade's official position? Why were you against that change which would have allowed general obligation bonds to pay for annexation?

A [42] The Crusade was against annexation. Therefore, we were against a sale of bonds to cover this annexation because we were against annexation of this particular area at that time.

Q This was a City Charter change?

A That is right.

Q In your ninth recommendation you asked for what?

A A moratorium on the annexation of Chesterfield County and Richmond. We asked the General Assembly to do this.

Q Why were you against annexation? Why were you for a moratorium on annexation?

A We were against annexation because it would dilute the black vote in the City of Richmond. We were against any dilution of the black vote in the City of Richmond just when we were beginning to gain some political power through the vote in the City of Richmond, and the black vote had increased from 1956 when the Crusade was organized until this 1968 when this letter was written.

We felt that it would just dilute the black vote by annexation of parts of Chesterfield County.

Q Despite the enormous gains by 1968 by the Crusade and its candidates, how did the blacks themselves fare in the overall political picture in the City of [43] Richmond? Their vote increased. Did they increase in their participation in the City of Richmond after 1968?

A After 1968 we still had, as far as I know, no directors of any bureaus in the City of Richmond. I am thinking about things like school administration or personnel department, fire department, police department, no black people who actually could employ black people or persons who were qualified for the jobs. We had some committee appointments by 1968, but most of these were token appointments. They were in such



few numbers they could not influence the outcome of any vote.

Q You had how many members on Council in 1968, sir?

A There were nine members on City Council.

Q How many did the Crusade have?

A In 1968 there were three Crusade endorsed candidates on City Council: Carwile, Carpenter and Mr. Marsh.

Q Despite the growing Negro vote of strength, Dr. Thornton, as of 1968 you still were not effectively participating in the city government itself. Is that what you are saying?

* * *

A Because there were only three Crusade [44] endorsed candidates the City Council could still control the city government with R.F. endorsed candidates at that particular time. We were not getting the benefit of our vote in 1968, but we were a growing power. The population of the City of Richmond had increased greatly with black people. The voting strength had increased with black people and according to your maps there, Mr. Venable –

Q You can start with the first one.

* * *

Q This is overlay, plaintiff's exhibit 1 overlay, 1940.

THE COURT: All right.

A In 1940, only five precincts were predominately black. They were 1, 4, 5, 6, 7 and 45 and by 1971 –

Q Take them one at a time, Dr. Thornton.

A In 1950 –

Q Overlay 1950, plaintiff's exhibit 1.

A We had added also precincts 64, 18 and 19 to a predominately black precinct in the City of [45] Richmond.

Q This is overlay, plaintiff's exhibit 1, 1960.

A This had grown to include most of the East End precincts, 62, 63, 64, 65, 66, 67, 1, 4, 46, 47, 24, 18 and 19.

Also, we had a number of split precincts at that particular time, 68, 6, 7, 3, 25 and 45, 54, 55 and 51.

Q This is overlay 1971.

A By 1971 most of the precincts in the East End were predominately black. Sixty-two, 63, 64, 65, 66, 67, and in South Richmond precinct 6 and the West End precincts 18, 19, 23, 24, and the North Side of Richmond precincts 47, 46, 54, 55, 56, 57, 58, 59, and in the Central section of Richmond precincts 1, 4, and 45.

Q In 1968, Dr. Thornton, is it not true that the actual number of white registered voters exceeded the actual number of black registered voters by your calculation?

A In 1968? Yes, sir.

Q How did the vote compare, the percentage of those actually voting in 1968?

A The Crusade has always been able to turn out a greater percentage of the voters than the white [46] persons in the City of Richmond. In most elections we turn out about fifty percent of our voters; whereas, only about thirty percent of the white people vote.

Q What was the rough ratio between white and black people voting in 1968?



A There was very little difference between the actual number of voters in 1968 between the black and white people.

Q Did your registration drive continue between 1968 and 1970, sir?

A Yes. We have a continuous voter registration drive.

Q You were adding new voters to the rolls?

A That is right.

Q Did the population increase towards the black – Did the black ratio in the city increase between 1968 and 1970?

A Yes. The black population increased in the City of Richmond from 1968 to 1970.

* * *

Q [47] Is it not true, Dr. Thornton, that except for annexation with the growing voter registration trend and the growing black population in the City of Richmond, that the Crusade could have been successful in placing at least four members on Council and possibly five by 1970?

MR. OTT: I object.

THE COURT: Based on your past experience as Chairman of the Crusade –

A I am positive that we would have been able to get four persons elected to City Council who were [48] recommended by the Crusade for Voters.

I mentioned earlier Mr. Walter Kenney would have been elected had it not been for the vote in the annexed area. We know we could have gotten four persons elected, and we probably would have gotten more had not a number of candidates come from the

newly annexed area, so we are sure we would have had four and possibly five persons elected to City Council in 1970.

* * *

**2. Testimony of Henry L. Marsh, III**

* * *

Q [64] You are the Vice Mayor? Mr. Marsh, is it true the City of Richmond has a City Manager form of government?

A That is correct.

Q Would you explain to the Court the decision making process in a City Manager form of government.

A The policy of the city is set by the nine members of the Council. The City Manager who is appointed at the will of the Council executes the policy of the Council.

Q Mr. Marsh, you have been on City Council for a little over five years. During that time did you participate in the decisions on boundary expansion made by the City Council from 1966 when you first went into office until January 1, 1970, when annexation took effect?

A Some of the decisions, yes, I did. Some of them.

Q Some you did not?

A Yes.

Q Can you enumerate what you did and what you did not?

A I recall several votes in the Council on the question of whether or not we would request a Charter [65] change to permit the City to float bonds to pay for annexation. I recall the vote on the question of whether



or not Mr. Horace Edwards, the former City Manager, would be employed to represent the City in the annexation.

Q How did you vote on that, sir?

A I don't recall, frankly. I don't.

Q Continue.

A I voted against the bond, the permission to float bonds. There were other decisions from time to time that came to the Council concerning annexation and boundary expansion.

For the most part I believe I voted against all of these matters. There are some other matters that were decided apparently which I had no opportunity to participate in.

Q Can you enumerate those, sir?

A The Aldhizer Commission was requested by the state and appointed by the state had some activity concerning boundary expansion. I was not ever contacted by anyone from the Aldhizer Commission. I only learned of their activity and their negotiations on behalf of boundary expansion through the press.

Q Who is "they"?

A The Aldhizer Commission, the city officials and the Henrico officials in one situation, and all efforts [66] for boundary expansion, the Aldhizer Commission made, I had no contact concerning those until I learned about them in the press.

Q Did you want to?

A Of course, as elected official I was concerned about all of the decisions the government made.

Q Were you ever contacted as to any meetings, prior to meetings with the Aldhizer Commission?

A No. I was not privy to any discussions among the members of Council concerning the Aldhizer negotiations.

Q For the record, Mr. Marsh, what generally was the Aldhizer Commission supposed to be doing?

A This was a committee of representatives of the state government that was charged to work to resolve the boundary expansion problems in the City of Richmond. There were no Richmond or Richmond area representatives on this Commission.

It consisted of persons from other parts of the state. It made some efforts to bring together a merger with the part of Henrico and some other efforts at boundary expansion. Another example of non-participation would be the compromise that resulted in the annexation award. I had no knowledge of this compromise except what I learned.

Q [67] When was the first time you did learn there was a compromise of the annexation case?

A Only what I read in the newspaper about that. I had no prior discussions with other members of Council, City Manager or any other city officials concerning possible compromise.

Q Was it your desire to have participated in this, Mr. Marsh?

A Of course.

Q Did the City Council have a position paper or take any vote in support of or not in support of the Aldhizer amendment?

A I don't recall exactly. I believe we did, but I am not certain. We took so many votes in the past five years. I believe we did. I know we had some discussion of it in Council. It might have been when the



Commission was created. I am not sure. It could have been initiated in the Assembly.

Q Were your views known?

A Yes, sir. I think my views on boundary expansion and annexation in particular were known to all members of Council, anyway.

Q What were those views?

A Well, I was opposed to annexation as a means of boundary expansion. I was opposed to the attempts [68] that have been made thus far to expand the boundaries of the city.

Q For what reason, sir?

A There were many reasons. First I felt these efforts were made to dilute the black vote in the city.

In my own opinion I did not believe that even if the city – I had some question first whether or not the boundary expansion would really bring more assets to the city in view of the tremendous expense involved in meeting the needs of the new growing area. It has been my information the cost of providing essential services to the community are greater than where you have a stable community with the existing services you don't necessarily derive any financial benefits from annexation, but apart from that even assuming additional assets, the question really is how the assets are going to be used to solve the problems, not just getting more assets.

In other words, if the citizens who are concerned about equal opportunity cannot straighten their priority over decision making, it does the city no good to have more assets because the same problems in the city will continue to grow. I was not convinced annexation or

boundary expansion was the solution to the problems facing Richmond.

Q [69] Mr. Marsh, was this exclusion from meetings and the decision making process that you referred to, did this happen always with boundary expansion? Were you included on any of the decision making processes?

A Oh, yes.

Q Other than voting in Council?

A There were some matters obviously that I was not privy to but in other decisions I did participate.

Q You were not privy to what led up to and the information about the progress of any negotiations or compromising in the annexation suit, were you?

A No, sir. The first I learned of the possibility of a compromise was through a press report.

Q Through a newspaper report?

A Yes, sir.

Q In reference to the Aldhizer Commission did the Richmond Forward members and City Council get together with you and discuss how you were going to approach the Aldhizer amendment or suggest facts and figures to you or in any way involve you in the decision making process about what they were going to do, when they went to meetings with the Aldhizer Commission?

A No, sir. I was not approached about that at all.

* * *

**3. Testimony of Melvin W. Burnette.**

[91] *MELVIN WALDO BURNETTE*, called on behalf of the plaintiff, first being duly sworn, testified as follows:



DIRECT EXAMINATION

BY MR. VENABLE:

Q Mr. Burnette, for the record would you state your name, age and your address, please, sir.

A Melvin Waldo Burnette. I am fifty-five years old. I live at 3939 Cogbill Road.

Q Is that within the City of Richmond or County of Chesterfield?

A County of Chesterfield.

Q What is your vocation, sir? For whom do you work?

A I am the Executive Secretary of the Board of Supervisors of Chesterfield County.

Q How long have you held that position, sir?

A Since May, 1949.

Q I assume you are more than painfully aware you and your County were involved in an annexation suit in 1961 that ended in July, 1969, sir.

A Painfully aware, yes.

THE COURT: It must have happened while the Navy was on leave.

Q Are you familiar with an agreement [92] referred to sometimes as the Horner-Bagley agreement?

A Yes. This was a line the city agreed they could live with, yes, sir.

Q Was this pursuant to a proposed compromise of the annexation suit?

A Yes, sir.

Q Did you participate in drawing that line, that Horner-Bagley line?

A Not in the actual drawing of the line. I did furnish our Chairman, Mr. Horner, with a great deal of information from time to time which would allow him

to be prepared to draw such a line. I met with him many times and gave him all the information we required.

Q Over how long a period of time did you meet with Mr. Horner to furnish him with this information?

A Several weeks.

Q Were you aware that Mr. Horner was meeting with city officials to discuss a compromise?

A Yes, sir.

Q Over what period of time were you aware of these meetings?

A It started back in 1965 when we had several meetings and continued off and on, right up until the day Mr. Horner went on the stand to give the compromise agreement.

Q [93] Did Mr. Horner keep contact with the Board of Supervisors during that period of time?

A Yes. Just about every time that he met with Mr. Bagley or the other people he would come back to the Board to report on the exact progress of the negotiations.

Q Was he seeking information from you during this period of time?

A Yes, indeed.

Q Did you participate in any of the compromise negotiations between officials of the City of Richmond and officials of the County of Chesterfield?

A Yes, on several occasions. I think it started out in 1965 – In 1968 we had some and in 1969 we had some.

Q Starting with 1965.

A In 1965, there were two meetings I believe that I attended at Jack Brent's house. Present were Mr.



Edwards who was then City Manager and Mr. Crowe who was then Mayor and Mr. Horner and myself. At both of those meetings that was the makeup of those present.

Q Who called those meetings, sir?

A Mr. Brent called them on behalf of the city.

Q What was the subject of conversation?

A Well, at that stage of the negotiations [94] I believe this was more or less an exploratory situation. They wanted to see if we were possibly in the mood to negotiate a settlement, more like a feeler type of meeting.

Q Did you get involved in positions? By that I mean did either side present say we need so much land or utilities, so much this, so much of that, at these Jack Brent meetings?

A Yes. I believe that it was stated on a number of occasions that the city needed people. They needed some land in which to grow, and they needed a better economic base.

Q What was the emphasis of the conference;

A It was always people, the number of people.

Q Was race discussed, sir?

A Well, I am sure it was. We pointed out to those present that about 95 percent of the people around the city would be white citizens and that any number of people that the city annexed, what we would agree to give them, would be white people.

Q How much discussion was centered around land and economics?

A Very little, actually. We would start talking about schools or land or something but –

Q Who is we?

A [95] It would come back to people, those doing the discussion, Mr. Edwards and Mr. Crowe, Mr. Horner and myself. Mr. Horner and I would talk about schools and land, vacant land, for expansion, but Mr. Edwards and Mr. Crowe would always come back eventually to the number of people they needed.

BY THE COURT:

Q What was significant about that, so I will get it straight, as you understood it?

A Well, it was common knowledge, Your Honor, that the City of Richmond was going black.

Q When you talk about people, you are talking about race?

A Yes. It was common knowledge they were going black. The city realized this. We realized it. They claimed they had to have people from Chesterfield to offset the growing black race in the city. This was the basis of their whole negotiations as far as I am concerned.

THE COURT: Go ahead. I am sorry I interrupted you. I wanted to get it straight in my own mind to start with.

BY MR. VENABLE: Continued

Q Did you attend any other meetings between [96] these two meetings with Mr. Brent, in Mr. Brent's home in the year 1966? Did you attend any meetings yourself?

A Not that I recall.

Q The year of 1967?

A Not that I recall.

Q When was your next meeting in reference to a compromise and with whom was it?



A I had a series of meetings with Mr. Kiepper, City Manager.

Q Beginning when?

A Beginning on July 16, 1968. These meetings were at the direction of the Court. I think Judge White, in one of his pre-trial conferences suggested Mr. Kiepper and I get together to seek some grounds with which we might be able to compromise the case.

Q Mr. Burnette, from July 16, 1968, back to your last meeting at Mr. Brent's home, were you aware of any other meetings that were taking place between the officials of the City of Richmond and the County of Chesterfield seeking a compromise of the annexation case?

A Yes. There were several meetings which I did not attend. At one point a number, three members of the Board of Supervisors, met with certain members of City Council. There was a meeting in Farmville I believe between certain officials of the county and the city. [97] There may have been others.

Q That is all you know about them?

A Yes.

Q In 1968, July 16, 1968, you began a series of meetings with Alan Kiepper?

A Yes, sir.

Q His position is what?

A City Manager of Richmond.

Q Did you take notes at those meetings, sir?

A I did.

Q Do you have them in Court with you?

A I did not take notes at the meetings. I went back to the office and immediately wrote down the jist of the discussions in my own handwriting, and because I

was the only one at this meeting for the county, I wanted to be very sure that I had a note on what transpired.

MR. VENABLE: Your Honor, we are referring to plaintiff's exhibit number 32.

THE COURT: I see the description.

Q The time thing is what I am interested in at the moment, Mr. Burnette. How much time elapsed from your meeting with Mr. Kiepper, the City Manager, and the time in which you wrote those notes?

A Immediately upon my return to my office [98] I wrote these notes.

Q Meeting by meeting? Where did you meet? What was discussed on July 16?

A We met at Mr. Donut which is a coffee and donut shop at Southside Plaza. This was on July 16.

Q What time did you meet?

A We met at 8:40. This was just a preliminary meeting. We discussed how to proceed on the negotiations and how we were to conduct ourselves, who possibly to include in the meetings. It was decided that just the two of us would meet, and we decided I believe at that time that we would try to give each other some tangible evidence of what grounds we might meet on.

Q Did Mr. Kiepper indicate to you the city's basic negotiating position at that time? In other words, was it people or was it land or was it tax?

A Mr. Kiepper said they had to balance the population, that they needed land for industry and they had to balance the population. This was in 1968 now, and the whole aura of events taking place during this time I think was colored by the forthcoming



annexation case, the Aldhizer amendment coming up, and we were in a state of great transition we felt. He just said they needed population, pure and simple.

Q Is it your testimony people were the [99] basis of the negotiations?

A All people, paramount.

Q Was it indicated whether they were white or black people?

A On many of these meetings with Mr. Kiepper I discussed with him the composition of the people around the city, that at least 95 percent of them were black.

Q Black?

A Excuse me. Ninety five percent of them were white, five percent were black, and that any percentage of people he would get out of our county would be ninety-five percent white. So that race was not necessarily mentioned at every meeting, but we both knew what we were talking about.

Q What conclusions were reached at this July 16 meeting?

A We decided to meet again. I guess that was the biggest conclusion. We tried to set goals to see if we could come back with a figure that each of us could get approved by our counselling board and meet again.

Q This figure you are talking about –

A The number of people.

Q Did Mr. Kiepper expressed to you at this first meeting how much land the city wanted?

A No, I don't think so.

Q [100] Did he express to you any question about the utility situation?

A No.

Q Did he express to you anything about roads or schools?

A No.

Q Did he express any interest in the tax base, where the shopping centers, things of that nature were?

A I, of course advised him if he got anything he would have to get Southside Plaza which had I think about seventy percent of our sales tax.

Q Did he bring up the subject of the tax base?

A No, I don't think so.

Q A fair statement would be Mr. Kiepper was negotiating on the number of white people?

A Yes, sir.

Q What was your next meeting with Mr. Kiepper?

A We met on July 29. No, on July 30. The meeting was arranged for on July 29. We met at the Virginia Inn. We had a very good meeting. We discussed the situation considerably and I gave him a map that would show the county would willingly settle for 8.5 square miles [101] and about 18,500 people.

Q Did you break down in that information that you gave to Mr. Keipper the racial composition on those numbers of people?

A No. It was not necessary.

Q Continue.

A I suggested that he might seek a settlement along these lines, that it would certainly help our situation if he could get this thing out of Court. He said he thought that the line suggested would not be sufficient for him to settle on, but he did take the map and said he would see what he could do with it.

Q Did he at any time indicate to you at this meeting what amount of territory the city would be



interested in, geography, in starting at a negotiating point with?

A No.

Q Did he discuss with you tax base?

A No.

Q Did he discuss with you schools?

A No.

Q Did he discuss with you utilities or roads?

A Not at that time.

Q Is it a fair statement that at this point [102] Mr. Kiepper was still negotiating on how many white people the city required?

A He always came back to a number of people they had to have.

Q What was your next meeting with Mr. Kiepper, sir?

Before we get into that, did Mr. Kiepper make any mention to you of his position with City Council, how much support for these negotiations he was having from City Council?

A In one meeting he said that he had six members of the Council, that he was dealing with, and that the other three had not been told.

Q Did he ever identify who the other three were, sir?

A No, he did not have to. It was pretty well evident by the newspaper.

Q Would you explain that remark, sir.

A I think Mr. Marsh, Mr. Carpenter and Mr. Carwile were not consulted with, and it was very eivdent by actions of the Council in the newspaper. I had no doubt when he made the statement that he had only negotiated with six members of Council.

Q Did he express to you the fact that he was negotiating for the six members of Council, that this [103] was their position?

A Well, he represented the six members of Council. He had not consulted with the others. He let me know the others had not been consulted by anybody on this case.

Q So he was negotiating for those six members of Council.

A I assume that he was, yes.

Q What was your next meeting with Mr. Kiepper?

A We next met on August 5, 1968, at my house, and I gave him a map which showed about 18,871 people and showed him where industrial land was and the area had about eighty-five to ninety-five percent of the sales tax in that area, but only five percent of the families were colored. He again said it was too small.

Q In what way was it too small? Geographicaly too small?

A No. It was only in the numbers again. He had to have a certain number of people. At this meeting I explained how nice it would be to settle this thing out of Court. We would not have to fight a vicious annexation suit. We would save a lot of money in lawyers' fees. We certainly could use the time to better both the city and the county rather than sitting around in Court. He agreed [104] with all of this of course except we had not offered him enough people.

Q Had you been able to get the city to delineate a line on a map?

A No, sir. They never gave us a map until quite a



bit after this time.

Q What was your next meeting with Mr. Kiepper?

A We met again August 12. We met at my house again. He gave me a map at this time showing 35.7 square miles, and it had 56,540 people. I told him that it was no use to negotiate any further, that we were too far apart, and it was not in the best interest of the county, that we consider a thing of this kind. He seemed to want to continue the negotiations, and he stated the city perhaps could bring this down to 50,000 people.

I think at one time in the meetings that I said we would be able to get up to about 25,000 or 30,000, but this point in time we were still miles apart.

Q What was the city's position at this point on utilities? Did he discuss utilities with you at this meeting;

A No. In one of these meetings I discussed with him that we had to maintain enough of our school system and our water system to be able to continue as a [105] county, and enough of our school system to be able to continue as a county.

Q Did he ever discuss with you the city's need for utilities, land, tax base or schools?

A He did discuss the city's need for additional land at several occasions, but it was always our negotiations were in a framework of the number of people.

Q Did he present any facts or figures of how much vacant land he needed?

A No.

Q It was a passing remark?

A Yes. It was one of the issues that he was supposed to consider, but certainly it was not initially

as prominent as the number of people.

Q He was pretty specific about the number of people?

A In every case.

Q What was the result of that meeting?

A He left at 10:30 that night. I told him if we needed another meeting I would call him, that I did not think that another meeting would be necessary, that we were too far apart.

Q Did you in fact meet with him again?

A Yes. On August 19 I called him and we [106] set a meeting for the 21st at 9:00 o'clock. We met again at Mr. Donut Shop. Here again I stressed the need perhaps that we should continue the negotiations as the Court had requested.

Q May I stop you a moment so we can get the time frame of this. Had you entered trial yet on annexation at this point?

A August 19, I don't think we had entered trial.

Q You went to trial twice?

A Right, several times, I think. Twice. First of all under Judge Old and I believe 1966. Then under Judge White in 1968. Again under Judge Abbott in 1969.

MR. VENABLE: For the Court's benefit, as we go through these meetings, Your Honor, defendant's exhibit 24 and plaintiff's exhibit 7, they are one and the same. They are a chronology that indicate the progress of Chesterfield, Henrico, and other things. For the purpose of this testimony, the Chesterfield trial –

THE COURT: Thank you.

MR. VENABLE: It should be two or three pages.



Q [107] Back to the August 19 meeting what was discussed at that meeting sir?

A Well, I think we stressed the need for continued negotiations as the Court had requested, and I told him that we had many problems on the county's side. We had a split Board. Some wanted me to continue to negotiate; others did not want to prolong it at all. He made something of that same statement as to City Council and that he had agreed to give up to settle the case for about 50,000 people and that I had agreed that I probably could get the Board to agree on about 30,000, 35,000 people, that we were not too far apart if we could just reach a common ground. He would take this back to his Council to see if we could get some agreement.

Q Did you subsequently meet again, sir?

A. On August 26 Mr. Kiepper called, and he said that the city would need people, industrial land and vacant land, in that order, and the city would negotiate further on a figure between 36,000 and 50,000.

Q Did he tell you at this particular juncture – He has told you the number of people – Did he tell you how much land, how much industrial land or vacant land? Did he give you any figures?

A No, just people.

Q [108] Continue, sir.

A. We met again on Friday, August 30. We arranged that he would meet me at 6:00 o'clock, at a place not too far from my home. He said at 7:00 o'clock, and then he said he had been delayed, and we decided to meet again on the following day, on the 31st. We met at Schraffp's. We had lunch. I gave him a map showing 21,358 people. He said we could possibly

add some 3300 people to that. He pointed out again we had a divided feeling, and that this was a real "hard sell" in our eye. He said the city would never accept that few people with the present Council and the present lawyers. We had a very frank discussion of this, and he did not think we could settle at that point.

Q What was the subject of that frank discussion you had?

A Well, the majority of Council believed they had most of the case won, that they would get all that they asked for and that they had some questions as to whether they could pay a bill with only six members of Council and there were other considerations stated at this time.

Q At this time did Mr. Kiepper present you with any figures on what he needed in vacant land?

A No, sir.

Q [109] What about with reference to industrial land?

A No, sir.

Q Did he discuss with you feelings as to the tax base, schools, roads?

A No.

Q So again the only thing he is speaking of is the number of people.

A The number of people.

Q Mr. Burnette, did Mr. Kiepper ever tell you when you were going to get to talk about land and schools and the rest of this stuff?

A No. I had the idea from my figures if we could ever agree on the number of people everything else would fall in place.



Q What was your next meeting with Mr. Kiepper?

A We met on September 12. He gave us a map at that time, I believe. No. He said he would bring it by. He came late that afternoon and presented his need and stated we should still try to negotiate. His line had about 45,000 people in it. I told him I did not think our Board would accept this, and we did talk for about twenty minutes or so and he left. That was the last meeting we had.

Q [110] His line shows 45,000 people? How much vacant land did it show?

A I don't have that copy.

Q Did he discuss land?

A No, people.

Q Schools, roads, utilities?

A No.

Q Assessable?

A No.

Q Industrial land?

A He mentioned the fact that they needed land for industrial expansion.

Q Did he say how much?

A No, sir. On this particular time it was only people.

Q Did you have anymore meetings with Mr. Alan Kiepper?

A Not alone.

Q Did you ever discuss the councilmatic election of 1970 with Mr. Kiepper?

A Yes. I think that during our discussions we pointed out that the Council would have an election in 1970, that it would be nice to settle this case before January, 1970, so that would go into the city, which

would help the city out in its coming election. This was very [111] important with the city at that time. Everybody knew that in 1968 the elections were right close. We expected they would be much closer in 1970, and I think that was the basis for all the negotiations, was to get more people in so they could keep the Council of the City of Richmond white.

Q You broke off your meetings in September, and you went to trial. Is that correct?

A Yes, sir.

Q When did you next meet with officials of the city?

A I believe it was in Williamsburg and on the Aldhizer amendment.

Q That was the next time?

A The next time I had any meetings with the city, yes.

Q When did Judge White disqualify himself in the annexation case? Do you remember?

A I think it was January, 1969.

Q Did you have any proceedings prior to that?

A Not as far as I can remember.

Q You mentioned the Aldhizer amendment, the Aldhizer Commission as opposed to the amendment. Was the Aldhizer Commission meeting during the Fall of 1968?

A [112] Yes. The Aldhizer amendment was in the Fall of 1968. It was passed by the General Assembly in 1969. It had to be reaffirmed in the Fall of 1968, yes.

Q When was the first time you were requested to attend meetings with members of the Aldhizer Commission, before or after Judge David Meade White's disqualifying himself?



A I am not sure.

Q Where was your first meeting with members of the Commission?

A In Williamsburg, I believe the first meeting was held, and I believe one is in the Hotel Richmond. It could have been vice versa.

Q What was the purpose of the Aldhizer Commission meeting?

A The boundary expansion – Richmond has been telling the General Assembly for years the problems that it was having with its boundary expansion, and its frustrations. It did not seem to want to annex Henrico. The case in Chesterfield had been thrown out of Court. It was somewhat frustrated and I think this Commission was set up to take care of the problems of the City of Richmond, again the capital of the Commonwealth.

Q This meeting you had in Williamsburg with the members of the Aldhizer Commission, who was there [113] representing the City of Richmond?

A I don't think that I can recount them all, but I think Phil Bagley was there.

Q What was his position on Council at that time?

A He was Mayor at the time.

Q Who else was there?

A I think Conrad Mattox was there. I think Mr. Crowe, Mr. Wheat was there, to the best of my knowledge. I am not certain about Mr. Crowe.

Q Did these gentlemen who represented the City of Richmond attempt to persuade you to merge voluntarily with the city and Henrico at this meeting in Williamsburg?

A Yes, this was a great part of the thrust of the meeting. The Aldhizer Commission thought that if we

could get some cooperation between the two counties, to cooperatively give to the city a part of each cost then the city would not have any problems with its racial buildup.

Much was discussed concerning the portion of the county that would be given to the city. Actually, a map was drawn.

Q Mr. Burnette, what reasons did Mr. Bagley, Mr. Mattox, Mr. Wheat, other members of the Richmond delegation [114] to the Commission meeting in Williamsburg give you to try to persuade you to voluntarily cooperate with some form of merger?

MR. CROSLEY: I ask that the question be limited to one individual at a time.

THE COURT: I think he may explain. The objection is overruled. Go ahead, sir.

A Would you repeat your question.

Q What statements did these individuals representing the city, Mr. Bagley, Conard Mattox, Mr. Wheat and any other member of the delegation which you may remember, what reasons did they give you as representatives of Chesterfield County for trying to persuade you to voluntarily merge?

MR. CROSLEY: I object to the question. It is leading.

THE COURT: Fine.

Q – To voluntarily merge with the county, with Henrico and the city.

A Well –

THE COURT: Try to be specific as to who said what, if you can, if anything.

A Judge, this happened several years ago.



THE COURT: I understand.

A I can only recall the jist of the conversation. [115] Who said exactly what I don't know.

THE COURT: Can you tell me who was present at the conversation?

A I have already mentioned the city's side. For the county, Mr. Horner and Mr. Dietsch and myself and I believe Mr. Dunn and several others from Henrico plus all of the members or most of the members of the Aldhizer Commission.

BY THE COURT:

Q I take it you are about to tell me the jist of the conversation. Is that correct?

A Yes, sir.

Q Can you tell me whether it emanated, the jist, came from the delegation from the City of Richmond or from the other gentlemen?

A The City of Richmond emphasized to the Aldhizer Commission that they were in trouble, that the black population was growing, and they had to get some more white people from either one or both of the counties. This was the reason they wanted to get, or the reason they wanted to expand their boundaries.

* * *

Q [118] At what point did Mr. Horner and Mayor Bagley reach an agreement and compromise?

A I think this was signed on May 15, 1969.

Q You are talking about the line?

A Yes.

Q [119] The Horner-Bagley line?

A Yes. The money was not decided for quite a bit later.

Q Do you remember when the city actually agreed to all the terms of the compromise?

A Mr. Horner testified I believe on June 16 and we met again about the 19th and again on the 24th of June.

Q What were the conditions of the compromise, sir?

A We had certain conditions. The county could build schools apparently faster than the city. We were to build three schools for the city. We were to educate some of the children that lived in the annexed area because they did not have enough school room space.

Q Would you go back to that last agreement. How many children did you have to educate for the city because there were not school room spaces?

A I believe there were about 3500 or 3600.

Q They were not enough to take care of that many children? When was that period of time?

A Quite a while after the line was drawn. It was one more reason, there would be no right of appeal by the city, because if we signed the compromise it would not be any right for the county to appeal. It might upset [120] the ruling and prolong it further in the courts. I think of the night of the 19th they had mentioned rather pointedly that if we did appeal that the people in the annexed territory would not come into the city on January 1. This was absolutely necessary in order that they could vote in the election of June, 1970.

Q I want to break your line of thought for a moment to come back to the night the line was agreed upon. Did you receive a telephone call that evening?



A Yes. I was in my office. It was at night, as I recall. I was in the office and Mr. Horner was with Mayor Bagley at that time. He read me the line and asked me to figure up the exact number of people in that line to ascertain if 44,000 people were in that line.

Q Did he state that the terms of a compromise were substantially worked out and that Mr. Horner took the stand and testified – How much time was left in the annexation trial itself?

A About three or four days, perhaps three days I would say.

Q This compromise agreement that you entered into, was it adopted by the Court?

A Yes, it was.

Q Verbatim?

A Yes, sir.

* * *

Q [121] On the night that you looked at the population information on the Horner-Bagley line did Mr. Horner require any other information from you other than population?

A He asked me about the number of school children in the area. I gave it to him. I don't know whether he told Mr. Bagley that or not.

Q Did he ask you about assessables?

A No, sir.

Q Did he ask you about vacant land?

A No, sir.

Q About roads?

A No, sir.

Q Utilities?

A [122] No, just people.

Q School children?

A I think that was for his own benefit.

* * *

Q [124] Mr. Burnette, you testified in answer to Mr. Venable's question that during the course of discussions with you and Mr. Kiepper that the basic topic, the principal topic was negotiation of the number of white people. It that true?

A No. I said people. I did say, however, that it was understood that by people we meant 95 percent white people.

* * *

CROSS EXAMINATION

[126] Isn't it true, Mr. Burnette, that Mr. Kiepper indicated to you that what he meant by balance of population was an economic and social balance of the population?

A No, sir.

Q What did he indicate to you? What did he say? What statements did he make?

A He must balance the colored and white population for the coming election.

Q He used those terms – colored –

A Colored, black and white, maybe, but we understood the city was having an election in June, 1970.

* * *

**4. Testimony of Grady W. Dalton.**

* * *

Q [139] For the record would you state your name, age and address.



A My full name is Grady William Dalton, age sixty-three, Richlands, Virginia.

Q Mr. Dalton, do you hold any elective office in the State of Virginia?

A I am a member of the General Assembly representing Tazewell County.

Q Mr. Dalton, I would like to take your attention back to the special session of the General Assembly in 1969. Do you remember a commission and amendment that came before the House and the Sneate to vote upon called the Aldhizer amendment?

A Yes, I do.

Q What was the purpose of the Aldhizer amendment? What was it going to do? Give the state power to do what?

A As I recall, the Aldhizer amendment, it merely provided or was to provide in the State Constitution that the General Assembly would have the power or be [140] authorized to determine the boundaries of the capital city each ten years.

* * *

Q [142] Did the people identify themselves as being from the City of Richmond?

A They did.

Q What was their problem?

* * *

Q Did they identify themselves as representatives of the City of Richmond as opposed to representatives of Chesterfield County?

A [143] From what they said to me it would be no question about their identity as representing the City of Richmond.

THE COURT: Were they members of the House?

A Members of the General Assembly, yes.

Q What was their problem?

A You know, I am classed as a country boy, being from back in Tazewell County. The proposal was in this manner, well, you have no problem out in the far southwest, but we have an intolerable situation in Richmond. You have no race problem out there because you have very few colored people, but this city is becoming about fifty percent colored. We have a problem. We want the help of the country boys. That is the jist of the language that was used, of the conversation, as I remember it. Again, I cannot put my finger on any particular person that said that to me, but I am sure they were of the Richmond delegation.

Q Mr. Dalton, did you vote for the amendment?

A Yes, sir.

Q Why did you vote for the amendment?

A Not because anyone convinced me. It was my own convictions. I thought we owed something to the [144] State of Virginia in determining the boundaries of our capital city.

MR. VENABLE: No further questions.

MR. DAVENPORT: No questions.

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WITNESS STOOD ASIDE
(Having been excused).



**5. Testimony of Irvin G. Horner.**

[145] IRVIN G. HORNER, called on behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VENABLE:

Q For the record, Mr. Horner, would you state your name, age and address, please, sir.

A Irvin G. Horner, age fifty-one. My address is Mosely, Virginia.

Q Is that within Chesterfield County?

A The Post Office is Powhatan. My residence is in Chesterfield.

Q What business are you in, Mr. Horner?

A I am in general business, a home builder, insurance, motel, general merchandise store, and so on.

Q You hold an elective office, sir?

A Yes, sir.

Q What is that?

A Board of Supervisors, Chesterfield County, presently serving as Chairman of this Board.

Q How long have you been on the Board of Supervisors of Chesterfield County?

A Twenty-three and a fraction years, be twenty-four years the end of this year.

Q I presume, sir, you are aware the county was involved in an annexation beginning in 1961 and ending [146] in January, 1970.

A Yes, sir. I was there at the start and there at the finish.

Q Have you heard the expression "Horner-Bagley line"?

A Very many times.

Q Mr. Horner, what part did you play in the compromise of that annexation suit of the City of Richmond against Chesterfield County?

A Ask it again. You mean in toto, initially or what?

Q You negotiated the compromise, did you not, sir, for the county on behalf of the county?

A I attended many meetings in behalf of the county relative to an effort to reach agreement, to save whatever would be saved from a fought contest in Court.

Q What was the first contact you had with officials from the City of Richmond in which the subject of compromising the annexation suit was discussed?

A The best of my recollection, the first contacts were had immediately following the city's decision to not accept the Henrico County award. This I believe was in 1965, late Spring, early Summer.

* * *

Q [148] Did you have a subsequent meeting to the Jack Brent meeting in 1965?

A Yes. There were two such meetings and possibly, and I believe a third meeting at which two other supervisors, namely Dr. Martin and Mr. Raymond Britton were there. The city people there at the time, I am not [149] totally confident of the exact persons other than Bagley was there at this meeting and a Councilman, and I am confident Mr. Edwards was there. Also I believe Mr. Crowe was also there. As I recall, I believe there were three meetings. Two of them Burnette and I and Mayor Crowe and Mr. Edwards, and the other was a Supervisor.



It really represented a committee from our Board of the areas contiguous to the city. They were entitled to be informed of what was going on.

Q Did you get down to the nitty gritty of drawing lines, presenting maps, talking about land and all the rest of that stuff?

A A lot of talk went on. I cannot recall any lines being put on the maps. We talked the maximum we thought we could give up. I don't believe the city talked of anything they would definitely accept.

Q The city did not present any proposals to you?

A No, sir.

* * *

Q [150] Where did you meet, sir?

A We met in Farmville.

Q Where in Farmville? Do you remember, sir?

A We met in the home of Mr. Wheat's wife's parents.

Q What did you discuss at that meeting?

A At that meeting – There again, it was an exploratory situation. We talked; they talked. They talked about land. They talked about people and just general discussions in that direction.

Q Did you go down with a proposal in mind?

A We did not go to this meeting with any definite proposal.

Q Would they put a line on the map at this meeting?

A They did not.

Q What was the basis for their negotiating point at this meeting?

A At this meeting it was relayed to us, on pressing by me, we were there for a purpose to find out what the least the city would consider was in the event there was a possibility of getting together and eliminating [151] the trial and Court suit.

Q What was the least they would consider?

A This was stated by Mr. Wheat to my recollection, that we needed 44,000 leadership type of white affluent people.

Q Did Mr. Wheat tell you how much land they needed?

A No, and any discussion, I am confident, was they needed land for expansion, but how much was never talked about.

Q Did they tell you how much roads or schools or utilities –

A Those items to my knowledge were not discussed.

Q Were you down there prepared to discuss them?

A We were down there to listen and discuss anything that was pertinent to what we believed our case to be. We did not get an opportunity to discuss; we did not have anything to discuss.

Q Did you attempt to discuss land and schools and roads and utilities and assessables?

A It was our belief if we were to get, the least they would accept, these would be the things we would have talked about.

Q [152] What did they talk about?

A They talked about people.

Q Did they talk about votes?

A I am sure in this discussion votes were talked about.



They asked us in the fifty-one square mile area approximately how many black citizens were in this area. I had no definite census, but it was estimated about five percent of the area of fifty-one square miles were black and about ninety-five percent were white.

Q When they discussed people, were they discussing a need for 44,000 white people or 44,000 black people?

A Well, in that area, they had to be talking about the ratio I just mentioned.

Q You specifically remember Mr. Wheat's saying leadership type white people?

A Yes, sir.

Q White people?

A Yes, sir.

Q Did Mr. Wheat also discuss and use the word "voter"?

A In the discussion, as to the context, I don't know, but I am confident the word "voter" was used.

Q Did Mr. Davenport or Mr. Wheat draw a [153] line on the map for you?

A Not to my knowledge.

Q Did you attempt then to get them to talk geography? Where a line would go?

A We were there to find out. We were not in position to push anything beyond what they were willing to talk about. We did not push.

Q Were they willing to talk about anything but white affluent people?

A This was the principal jist of their discussion.

Q What was the next meeting that you attended in reference to compromise, Mr. Horner?

A The next meeting to my knowledge that I attended was in the late Summer of 1968. It was two or perhaps three years after the Farmville meeting. In the interim we realized our case went to Court, was thrown out, taken to appeal, appeal turned down by the State Supreme Court and then after that was turned down we were obviously coming back into Court. So with this background we met, I and Mr. Dietsch, the Supervisor from Manchester District, the most contiguous district to the City of Richmond, met with Mayor Bagley who was Mayor at this time, having been elected I believe in 1968, and Mr. Jim Wheat.

We met in a conference room of the [154] Chesterfield County School Board. At this time the engineering firm that we had employed in the annexation case had prepared an easel type of map cut into districts, a magnetic type, which these study areas were numbered, etc., and they were on the map. They were separateable, to move them around, divide them, and this was at this meeting. We arranged to have this at this meeting so we could discuss geography if it became necessary to do so.

Q Did you in fact discuss geography at this meeting?

A No, to the best of my knowledge geography was not discussed. We had the map there available to be used. To my knowledge it was not used.

Q Let us talk about this map. It is a jigsaw puzzle map – How was it broken down?

A It was a map broken down by study area. It was a separate piece to be fitted into another piece.

Q Was anything written?

A Numbers.



Q Numbers of what?

A Just the numbers, 1, 2, 3 and 4. This represented on a tabulation, the square miles, people and other items.

Q Were you successful in getting Mayor Bagley and Councilman Wheat to show you where in the [155] fifty-one square miles they were requesting to draw a line for compromise?

A We were naturally concerned if they wanted 44,000 people, and I might add here that I had no sympathy or indication or belief, that the governing body I represented thought this amount of people was anywhere close to being reasonable. However, we were willing all along to talk and discuss, hoping that an agreement could be gotten together on. We went to this meeting in this frame of mind, trying to find out from the city, if you want 44,000 people, do you have in mind anywhere they should come from.

Q Did they have in mind where they should come from at this first meeting?

A If they had it in mind they did not reveal it to us.

Q Did they reveal to you how much vacant land they wanted?

A No, sir.

Q Did they reveal how many schools they wanted?

A No, sir.

Q Or how many utility facilities they wanted?

A No.

Q [156] Or how many assessables they needed?

A No, sir.

Q What percentage of industrial land they needed?

A No, sir.

Q The whole basis was people?

A We pressed them for where the people should come from. They apparently were not prepared to answer it.

Q When was the next meeting that you had?

A The meeting you just asked me of, and I reiterated – it became exposed to the press just prior to that day. Those led me to feel the trial was going to open in a few days, September 8, I believe, to be exact. We did not feel we should meet anymore in this atmosphere. We thought it would be improper and unethical. So it was determined at the end of this meeting we would meet again after the start of the trial if it proved all parties were interested.

Q Mr. Horner, at this first School Board meeting –

THE COURT: School Board meeting?

Q This meeting at the School Board, excuse me, sir. The conference room.

A On the premises of the School Board. [157] They had a much better facility than we did.

Q A better conference room?

A The new building and it is bigger and nicer and is air conditioned.

Q They discussed 44,000 white people or 44,000 black people at this meeting?

A I would not like to say at this meeting. It had already been stated in other meetings and I knew what they were talking about. I could not say white or black people came up at this meeting.

Q You knew what you were talking about?

A I knew what they were talking about. They knew. We all knew what they were talking about.



Q The trial began. Did you have a subsequent meeting pursuant to agreement after trial began?

A We did. We came back, similar circumstances, same people, practically a carbon copy, same discussions. It was not any accomplishment to my knowledge when we parted.

Q At this second meeting did they discuss what they needed in the way of utilities?

A No, sir.

Q Schools?

A No, sir.

Q Roads?

A [158] No, sir.

Q Taxes?

A No, sir.

Q Assessables? Vacant land?

A No, sir.

Q Industrial land?

A No, sir.

Q Did you have any further meetings in 1968 after this second abortive meeting at the School Board?

A Yes, sir, we did, sir. As you recall or may not recall, but it did develop that the case went to trial. Judge White who was Chief Judge at this time became sick, I believe in October, and had to excuse himself from the bench. The trial stopped while he was hospitalized, and in December or just prior to Christmas, since the trial was in recess, had not gone too far, it was believed by those in the city and us that this would be an appropriate opportunity to talk again, to see if there was any meeting of the mind to be helpful to both.

Q Did you meet?

A In Mr. Burnette's family room of his home. At that meeting it was Mr. Burnette, I, and I believe the same Supervisor, Mr. Dietsch, from Manchester, and from the city's side, one of the parties could not come. [159] Anyway, I believe Mayor Bagley was there and Mr. Crowe. As I recall Mr. Crowe had an engagement and could not get to the meeting.

Q Mayor Crowe?

A It was my understanding Mayor Crowe could not get to the meeting. I was more interested in my people that were going to be there. Bagley was the Mayor, of course. It was my belief Mr. Crowe did not make it. I was under the impression Mr. Crowe is the one that came and Bagley did not, but it is my belief after further consideration that Mr. Bagley was there and Crowe was not.

Q Who was there from the county?

A Mr. Burnette, myself, Mr. Fritz Dietsch.

Q You discussed the compromise. What was the city's position in reference to compromise? What was their bargaining point at this meeting?

A You have got to keep in mind we had had several meetings. We knew what the basis of maximum or minimum was they would accept. We knew this. This is all we knew. We were of course anxious to know geography as to what they were interested in, and of course as I said we thought their request was unreasonable. We were hoping and wishing they would immediately withdraw what we considered unreasonable demands and that it would eventually come to something reasonable.



Q [160] What were the unreasonable demands?

A 44,000 people.

Q Did they have any unreasonable demands about how much land they wanted?

A No, sir.

Q Or how much schools they wanted? How many roads?

A They did not discuss them.

Q Utilities? Assessables? The tax base?

A Those items were not discussed except other than to the degree the city people at times, at some of the meetings, indicated they needed land for expansion. The amount or the quantity was not brought up.

Q Were you successful in getting the city to put a line on the map?

A No, sir.

* * *

Q [163] Mr. Horner, did the Aldhizer Commission attempt to get Chesterfield County and Henrico County to voluntarily merge a portion of their counties with the city at this meeting?

A The Aldhizer Commission was interested in accomplishing the task they were set up to do, to explore ways to accomplish the expansion of the boundary areas of the capital city.

Q Did they ever agree on a line?

A We did call a break in this session at lunch time I believe, and they asked us to sit down, asked Henrico and asked us to do it, and have the city do it, to determine what the best was we would do from our governmental standpoint to bring about boundary expansion of the City of Richmond.

Q [164] Did they indicate if you did not they would –

A The friction was very strong there.

Q Did you enter into conversations with Conard Mattox, Mayor Bagley and other members from the Richmond City delegation to this meeting in Williamsburg? Did you enter into conversations with them about why you should give up part of the county to the City of Richmond?

A This meeting in Williamsburg, it was a round table, a lot of people. The city had their chance to talk, and we and the county were the commissioners there and their legal representatives.

Q I will rephrase that. What was the reason the city officials gave to this group for needing more support, expansion of the boundary area?

A The people from the city that talked, the city must gain more property or very shortly it will be an all black city.

Q An all black city? Did they lay any stress on economic or vacant land? Did they dwell on it, talk about it a lot?

A To my knowledge they did not talk about it enough to make an impression on me.

Q Did they talk about blacks and the blacks taking over the city a lot?

A [165] It was talk about the city people at this meeting, if the city was not allowed to expand its boundaries the government control would be taken over by the black population.

* * *



A [169] Yes, yes. About May 1 we met at my office on Hull Street. He had a map with him that day. I [170] had a map that day.

Q Did he take a line on that map?

A No. He had no line on it, but words to the effect – I don't know what the number of people, to but I would like them in this direction – I believe he indicated a figure different at this time that my people now say, take about 55,000 to solve the problems. My answer was I could never have gotten 44,000 through my boys. We were heading in the wrong direction.

Q When he traced out the area he would consider on the map, did he also trace out for you how much vacant land it was out there?

A Not to my knowledge.

Q Did you get to talking about schools?

A No.

Q Utilities?

A No.

Q Roads?

A No.

Q Etc.?

A No.

Q What were you talking about?

A We were talking about where an area would be or possibly be, to encompass the number of people they said they needed to accomplish their desires and for [171] settlement, for a compromise agreement.

* * *

A [173] So we set up an appointment for that evening I believe which was May 15. I went to his office. That is in the Mayor's office on Broad Street.

Q At that meeting did the two of you arrive upon a line that would be acceptable to the city?

A At that meeting we of course met and had a map and talked. I related to the Mayor in my phone conversation I did not have any idea that my Board would agree on this volume of people.

Q Which was the volume of people?

A 44,000 people or thereabouts. He mentioned a higher figure at another meeting. So I relayed to Mayor Bagley at the time we had been meeting an awful lot relative to this matter, and I have nothing to show for it [174] as to what the city will do. I said, I don't know what our Board will do, but I have no idea they will meet the number of people you are asking for.

Q Did the Mayor indicate to you that his Council would go along with what he agreed on?

A The Mayor said that he had been in touch with Council, with the majority of Council, and knew what was on their mind. He knew about what they thought they would agree on. I said – and he indicated this was approximately 44,000 people. I said, well, I had nothing. I have not had anything to tell my boys concretely what you will do. Mayor Bagley had pointed to a map, and said we could go out this area or this area. I said, let me dictate a line to you of an area that will encompass this many people. You write it down. If you would, as I dictate it to you write it down.

Q Did you dictate a line?

A I did dictate a line.

Q Did he write it down?

A He wrote it down and after concluding the writing down of the line, I said, Mayor, I have not got



anything to show for it. Will you sign this to the effect the City Council will agree to such line so I will at least have something concrete to take back to my people.

Q Is the line substantially the line that [175] encompasses the area that was finally annexed?

A It is the line except for a couple minor changes made at our request and one at the city's request.

Q How did you verify at that time the number of people within that line?

A After I dictated the line, and it was written down, I called Mel Burnette, our Executive Secretary, who has been following the contents of the study areas, through all the discussions and proceedings. I told him the study areas that were involved, that encompassed the line. I reiterated to him that according to the 1968 census taken prior to the beginning of the first trial that this area encompassed at that time 43,000 and some odd people.

I asked him at that time for my benefit how many school children this included.

Q Did Mayor Bagley want to know about school children?

A The Mayor did not ask for this information.

Q Did he want to know how much vacant land was in that area?

A He only asked me to verify how many people were in the area of the line that we drew. This I did, and at the bottom of this letter at my suggestion I [176] wanted something to go on, or words to the effect if settlement can be agreed upon I feel confident the City Council will agree to this line.

Q Did the Mayor request for you to tell him anything about utilities in that area?

A No.

Q Roads?

A No, only the number of people that were in this line.

He asked me to verify this which I did.

* * *

A [177] We met with him, John Thornton and myself met with Mayor Bagley and John Davenport on the evening of the 11th in the Mayor's office.

Q Did you discuss the agreement? Correct?

A We discussed the agreement.

Q Did they give you any conditions that [178] went along with this line and a dollar amount, any conditions to the agreement?

A They gave the condition – Our purpose of going there was to find out if they meant business and what they said, if they meant it, and if they were willing to stand behind it. They stipulated the condition they would go along with the agreement provided that no appeal was made by the county, and the annexation should take effect January 1, 1970, and the people in this area would be citizens from that date on and would be eligible voters in the Councilmatic election of 1970.

Q Who said that? Mayor Bagley or Mr. Davenport? Do you remember?

A No. The four of us were in this meeting when it was discussed. Whether Mayor Bagley or Mr. Davenport said it, I am not sure. They may both have said it, but it was said. Which one said it, categorically said it, I just could not say.

Q They were both in the conversation?



A Both in the conversation. There were four of us present. All four of us were in the conversation.

Q Did they ask you to eliminate the intervenors?

A It was suggested to us it would be [179] appreciated if we do everything we could to discourage the intervenors from appealing. Our lawyers reply was we had no control over them. Don't expect any assistance from us in this matter.

Q Mr. Horner, the agreement, the compromise agreement you formalized that night, was this agreement adopted by the annexation Court, the line and the money and all the other matters?

A This is the agreement that was ultimately adopted by the Court.

Q Verbatim?

A To my knowledge it was verbatim. Another exhibit was entered in by the county, number 108 that spelled out some details, but the line and the money was verbatim as to what the Judges handed down.

* * *

**6. Testimony of Donald G. Pendleton.**

[208] BY MR. VENABLE:

Q Mr. Pendleton, for the record would you state your name, your address and age.

A Donald G. Pendleton, Amherst, Virginia. I am thirty-nine years old.

Q What do you do for a living, sir?

A I am a practicing attorney in the town of Amherst and also the County of Amherst, Nelson County, Lynchburg and Campbell County.

Q Do you hold any elective office, sir?

A I am a member of the House of Delegates.

Q Representing what?

A I presently represent the City of Lynchburg and the County of Amherst.

Q When did you first become elected to the House of Delegates?

A I was elected in 1965, the Fall election of 1965, and to the seat in the House of Delegates in 1966, January.

Q Mr. Pendleton, are you familiar with a piece of legislation in the 1966 Assembly introduced by Senator Willey, to form a study commission to study the [209] expansion of boundaries of the City of Richmond?

A Not in 1966.

Q What year was it, sir?

A It has got to have been 1968.

Q Are you familiar with the commission that was set up?

A Yes.

Q It is referred to as the what commission?

A The Aldhizer Commission.

Q Who was the Chairman of that Commission?

A Senator George Aldhizer from Rockingham or Harrisonburg, Virginia.

Q Who appointed you to that Commission, sir?

A The Speaker of the House of Delegates.

Q Did you hold a position on that Commission?

A At the organizational meeting in July, 1968, I was elected the Vice Chairman of the Commission.

Q This Commission was formed by legislation in the 1968 Assembly. Is that correct, sir?



A It had to have been, yes.

Q Who introduced that legislation?

A If I recall correctly it was Senator Ed Willey of Richmond, Virginia.

Q [210] He represented the City of Richmond?

A At that time I believe he did.

Q When was your first meeting with the Commission, sir?

A In July, 1968.

Q Who attended that meeting?

A Well, it was of course the members of the Commission minus Delegate Edgar Baker from Lee County. He did not attend the meeting until after we had gone into special session, the special constitutional session in February, 1969.

Q Did any representatives from the City of Richmond, officials from the City of Richmond and the counties of Henrico and Chesterfield attend that meeting?

A Senator Ed Willey was there. He represents the City of Richmond in the State Senate, I believe Conard Mattox also of the City Attorney's office was there. We went into Executive session.

Q Was there anybody from the county there, sir?

A I don't recall people at the county at that particular meeting. They could have been, but I don't recall.

Q What was discussed at that meeting, sir? What was the topic?

A [211] The purpose of the Commission and what we were trying to achieve, the fact we operated with no state funds, that we had no staff other than one member of the Statutory Research and Drafting, and it

was decided we would not ask funds from anybody, particularly the City of Richmond or the counties of the state. We did this at our own expense. The Aldhizer Commission was at the individual's' own expense.

Q You mentioned the purposes of the Commission. I assume that you and other members of the Commission itself had ample time to sit down and discuss just what it was you were trying to do, did you not?

A That is correct.

Q What were you trying to do?

A Well, it was brought to the attention of the Commission that at the July meeting if certain elements in the City of Richmond were to take over the city government they would tear down all the monuments on Monument Avenue and further about the fact fifty-four percent of the school age – I think fifty-four percent or fifty-eight percent of the population was black at the time; that sixty percent was in the schools. In fact, the tax assessables were down and they had large welfare rolls in the city and that they were continuing to grow.

Q What was the purpose of the Commission? [212] What were you trying to do?

A The purpose of the Commission was to effect a merger with Henrico and Chesterfield Counties.

Q What was that supposed to serve?

A I think it certainly would have served to broaden the power base in the City of Richmond.

* * *

Q [216] Did you have an occasion to comment on the fact these three individuals were not there?



A Well, yes. I commented about that.

Q Did you comment to a city official?

A If I recall correctly, I think I talked with Mr. Conard Mattox, the City Attorney for the City of Richmond.

Q In reference to the fact that Carwile, Marsh and Carpenter were not there?

A Yes.

Q What was his response?

A I do not know whether it was his particular response. The impression that I had was that the reason the individuals were not asked is that they were troublemakers and would have been opposed to whatever was [217] going on.

Q Let us go back to the Williamsburg meeting. Can you enumerate who from the city in your memory was there?

A Mr. Conard Mattox, City Attorney; Mr. James Wheat who was a member of City Council at that time; Mayor Crowe was there. I believe Mr. Bagley was present. That is all I remember from the city.

Q From the county, sir?

A From the County of Henrico, Mr. Earl Dunn was present. I believe Mr. Beck is the County Attorney and the County Manager, that he was present from Henrico. From Chesterfield it was Mr. Horner. He is Chairman of the Board of Supervisors. Mr. Dietsch, who is a member of the Board of Supervisors, and he was in that affected area that later was annexed. Their County Attorney I believe was present.

Q Was Mr. Burnette there?

A Mr. Burnette was present, yes.

Q What was the Commission trying to accomplish in this meeting?

A In effect, a shotgun marriage.

Q What do you mean by shotgun marriage?

A They came down and all parties were present. We had a good round table discussion. Senator [218] Aldhizer and I informed them at the luncheon break to go out and draw up certain plans and let us have a compromise on what was coming to the City of Richmond. After lunch they came back with the compromise agreement.

Q Did you tell them what you would do if they did not?

A We would do it through legislation in the General Assembly.

Q Were you seeking to institute a long term program, or were you trying for something immediate, sir;

A Basically the Aldhizer Commission was interested in a long term arrangement. We wanted to have all of Henrico, possibly all of Chesterfield perform as one single unit of government in the Richmond Metropolitan area. This we thought would solve the problems for many years to come.

Q What was the problem, sir?

A The problem of the city, in the fact it was going black. The power structure and, you had large numbers of people on the welfare rolls and the question of taxes –

* * *

Q [219] When you say who controls, what do you mean? What political party controls or what? White or



black? Is that what you are saying, Mr. Pendleton? Who controls, the white or the black?

A I think this is the issue really.

Q What do you mean by boil it all down to [220] the essentials when you talk about welfare and tax?

A Well, power is something that any particular governmental community – You boil it all down, and that is the one controlling issue, who is going to elect and run the city or the county. Here the question is whether the blacks are going to have a hand in running the city or whether the present power structure in the City of Richmond is going to run it.

Q Would it be a fair statement that boundary expansion was going to prevent the blacks from taking control or having a hand –

MR. CROSLEY: I object to that question on the ground it is a leading question.

THE COURT: Overruled.

A Repeat your question.

Q Would it be a fair statement –

MR CROSLEY: I object on the ground it is an opinion and it is the issue at stake.

THE COURT: I think he can give his impression as to what the meeting was about. Overruled. Go ahead.

They have got my attention, Mr. Crosley. Go ahead.

Q Would it be a fair statement to say when you are talking about power that the intent to expand the [221] boundaries of the City of Richmond was to prevent the blacks from having a hand in governmental control or controlling at all?

A I say to have a majority control. That was the issue.

Q They stressed the 1970 Councilmatic, the upcoming Councilmatic election?

A Yes, sir, this was an issue, too.

Q What were they afraid of in the 1970 Councilmatic election as expressed by them?

THE COURT: If expressed.

A That a majority of the City Council of the City of Richmond would be bl[illegible]k.

Q Mr. Pendleton, once the Commission had had its meetings and presented legislation to the General Assembly, did you take an active part in that legislation?

A Yes, I did.

Q What was that part?

A It was my Constitutional amendment which I introduced on the House side. It was my Constitutional amendment which I introduced, out of the Committee on Counties, Cities and Towns, passed the floor of the House, sent to the Senate and later was adopted by the Senate and was an amendment approved in the first stages of Constitutional passage in the State of Virginia.

Q [222] Were you the floorleader?

A Yes, sir.

Q Were officials of the City of Richmond at the legislative Assembly in 1969 lobbying for the Aldhizer amendment bill to pass?

A Yes, sir.

Q Was Mr. Forb there?

A Yes, sir.

Q Was Mr. Bliley there?

A Yes, sir.

Q Was Mr. Bagley?

A Yes, sir.



Q Was Mr. Crowe there?

A Yes, sir.

Q Was Mr. Wheat there?

A Yes, sir.

Q Was Mr. Conard Mattox there?

A Yes, sir.

Q With whom did you have the closest contact in seeking the passage of this bill?

A Conard Mattox.

Q Did Mr. Mattox tell you why that bill had to pass.

A Yes.

Q Why?

A [223] That if it did not pass the 1970 election was right around the corner and the Constitutional amendment possibly could be put into effect prior to that.

* * *

### 7. Testimony of James G. Carpenter

[225] JAMES GLENN CARPENTER, called on behalf of the plaintiff, adversely, first being sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VENABLE:

Q For the record, Mr. Carpenter, would you state your name, age and address, please.

A James Glenn Carpenter, 3319 Haynes Avenue. I am forty-four.

Q What do you do for a living, sir?

A I am a Minister of the Gospel and Pastor of All Souls Presbyterian Church.

Q In the City of Richmond?

A Yes, sir.

Q Do you hold any elective office, Mr. Carpenter?

A I do.

Q [226] What is that?

A I am a member of the City Council of the City of Richmond.

Q When were you first elected, sir?

A 1968.

Q Were you recommended or endorsed by any organization in the City of Richmond?

A I was endorsed by several groups after I announced.

Q Did the Crusade for Voters endorse you, sir?

A Yes, they did.

Q Did the Crusade endorse you in the last election of 1970?

A Yes.

Q Mr. Carpenter, when was the first time you learned that there were private meetings being held between members of the City of Richmond, officials of the City of Richmond, and the Aldhizer Commission?

A I read it in the newspaper.

Q No one had ever told you prior to that there were meetings to be held?

A No, sir.

Q Do you know what the Aldhizer Commission was?

A [227] Yes, sir.

Q What was it?

A As I understand, it was a Commission appointed by the General Assembly that had the specific task with reference to the expansion of the city.

Q When was the first time you learned that officials of the City of Richmond were meeting with officials



of the County of Chesterfield in an effort to compromise the annexation case in 1968-1969?

A I don't know if I really heard of that until the case was in the Court.

Q How did you first learn of it?

A Again, through the newspaper.

Q In the newspaper?

A Yes, sir.

Q No member of the city government ever told you these meetings were going on?

A No, sir.

* * *

[228] I would have liked to have been a party to any meeting where Council was supposed to have been represented. I resent at least the statements that came from the press that the Williamsburg meeting, that there were persons from Council and the City Attorney who were representing Council. The problem I had with that is how could they represent Council when Council had taken no action? They did not represent me. I was on the Council.

* * *

Q [230] Has Mr. Bagley ever involved you in a conversation with him dealing with the purposes of annexation?

A He never had until this last weekend.

Q Where was that, sir?

A It was September 12, Sunday, at Virginia Beach, the Virginia Municipal League.

Q The Virginia Municipal League down there?

A Yes, sir.

Q What did Mr. Bagley tell you?

A He drew me aside and was giving me a summary of the speech he gave before some group in the city wherein he was expressing the feeling the city ought to go to Councilmatic elections, ought to go to parties, Democratic or Republican Party. And he was sharing a condensation of that speech, I assume. He indicated to me, he said, I had to do what I had to do concerning annexation, that I just did not believe the Niggers were qualified to run the city, and then he added, I just don't believe that Negroes are qualified to do that and ought not to be in that position.

Q Did he use the word "Niggers"?

A Yes, sir.

Q [231] The second word was "Neggra"?

A Yes. That was my understanding.

### 8. Testimony of B. Earl Dunn

[235] B. EARL DUNN, called on behalf of the plaintiff, first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. VENABLE:

Q Mr. Dunn, for the record please state your name, your address and age, please, sir.

A My name is Bernard Earl Dunn, 7608 South Pinehill Drive, Richmond, Virginia, and my age is fifty-four.

Q Is that in the County of Henrico, sir?

A Yes, sir.

Q What business are you in, Mr. Dunn?

A President of Dunn Tire Service.



Q Do you hold any elective office?

A Yes, sir. I am a member of the Virginia General Assembly, House of Delegates.

Q Did you hold any elective office prior to being elected to the General Assembly of Virginia?

A Yes, sir.

Q What was that?

A I was a member of the County Board of Supervisors from January 1, 1960, until December 31, 1969.

Q Did you hold any position within the Board?

A Yes, sir. During an eighteen-month period I served as Chairman of the Board.

* * *

Q [236] Referring to the discussions you had with the members of City Council at this time, 1960-1961, what were their reasons as expressed to you for merging the County of Henrico with the city?

A Principally, the reasons given to us were that the city was becoming a city that was kind of run down [237] and becoming a city of the old people, the poor people, the black people.

Q Old, poor and the black?

A Right.

Q What did they stress, old, poor or black?

A I remember very generally that they stressed the aspect of the whole thing, but I think the emphasis was possibly placed on the black society.

* * *

A [239] The Aldhizer Commission, as I first came in contact with it, and with the members of the Commission, as I recall, was in Williamsburg, Virginia. That was in I think March, 1969, as I recall.

Q Who was at that meeting, sir?

A [240] There were representatives from the state, as members of the Aldhizer Commission, from the City of Richmond and the County of Chesterfield and representatives from the County of Henrico.

Q Who was there from the City that you remember?

A Mayor Bagley, Mr. Crowe, Mr. Wheat.

Q Did Mayor Bagley or Mr. Crowe or Mr. Wheat make any comments which you remember in which they discussed the racial problems of the City of Richmond?

A Yes, sir. Here again the same old statement cropped up about the city becoming the city of the very old, the very poor and the black. That came up time and time again. I mean, we should have made a record of the thing and just played it back I suppose to ourselves.

Q Did they go into deep statistics and information and involve you in deep conversations about the old and the poor?

A No, sir.

Q What was most of their conversation about?

A At this particular time the conversations that I had mostly with them dealt on the ratio, the white-black ratio of the voting strength within the city. I tried to recall the figures as nearly as I could and to try to point out I did not believe that the figures were very [241] close really.

A You say the figures were not very close?

A The voting ratio between the whites and the blacks in the City of Richmond.

* * *



**9. Testimony of George W. Jones**

Q [247] Mr. Jones, for the record would you state your name, age and address, please, sir.

A George W. Jones, age forty-four, 65 Goodward Road, Chesterfield County.

Q Mr. Jones, what do you do for a living?

A I am a life underwriter and sales representative, and also the House of Delegates.

Q You are in the House of Delegates?

A Yes.

Q When were you first elected to the House of Delegates?

A In the special election in 1969, January, 1969, I was elected to the House of Delegates.

Q [248] Are you familiar with an amendment, proposed amendment to the Virginia Constitution referred to as the Aldhizer amendment?

A Yes, I am.

Q Were you for or against it?

A I was opposed to it.

* * *

Q What was your basis of opposition, sir?

A The primary basis for my opposition to it was that it was unconstitutional in my opinion and the main thrust and purpose of it was to dilute the black vote [249] of the City of Richmond.

Q Did you so publicly state that?

A Yes, I did. I stated it on the floor of the House in my maiden speech.

Q Mr. Jones, did members of the legislature with whom you spoke concerning the Aldhizer amendment

express to you the basis of their support or nonsupport for the amendment?

A Well, yes. Originally I talked to several legislatures that I can recall right off that originally indicated they would support me in my opposition to the Aldhizer amendment but later came back to me and stated they could not oppose the Aldhizer amendment because they did not want to see the City of Richmond go all black and become another Washington, D.C.

* * *

Q [250] Those members of the House of Delegates were of whom you spoke. What was the primary basis of their support for the amendment as expressed to you?

THE COURT: Are you talking about members of the House who represented the city?

MR. VENABLE: No, sir. Members of the House first, Your Honor.

MR. DAVENPORT: I object, Your Honor. I don't think it is relevant to the issue here.

THE COURT: Overruled, Mr. Davenport. I am not quite sure.

A This main concern was manifested in the fact they had been apparently told this was their capital city, and they could not let it go black.

* * *

Q [253] Has your opinion been changed at all since the 1969 Assembly?

A It has been borne out in my opinion that my original feelings and beliefs, as a matter of fact, that this has been proven to me, to my satisfaction, through different occasions since then.



Q What are those occasions?

A One would be a meeting that was held at Willow Oaks Country Club in which certain city officials were in attendance. Another private meeting.

Q What was this Willow Oaks meeting? When was that?

A Willow Oaks meeting was held sometime in February, 1970.

* * *

Q [255] What did these officials of the City of Richmond and these other individuals you have mentioned, tell you that, as you say, bore out this opinion of why annexation or the Aldhizer amendment was undertaken?

A Well, Mr. Henry Valentine at the beginning of the meeting stated that the purpose of annexation was to keep the city from going all black, and since this had been accomplished he knew there were ill feelings but he thought we all ought to heal our wounds and get together.

Q Did he say why you ought to get together?

A There was further discussion around the table, and I believe it was Mr. Nathan Forb that brought up that we should get together to keep the City Council from going black.

* * *

A [256] The second occasion was either in November, December or the very first part of January, prior to this last immediate session of the General Assembly in which I had a luncheon engagement with Mr. Bill Deniel. He [257] was acting as legislative representative for the City Council.

Q Is he on Council?

A Yes. He is on City Council. We met at his office in the Fidelity Building, where the Metropolitan Bank is located. We went upstairs for lunch and initially discussed the financial situation of the City of Richmond where they were trying to get through an additional one percent local option of a sales tax.

During the course of our luncheon engagement we got to discussing the City of Richmond as it currently stands. He pointed out to me that Richmond was not interested in the rest of Chesterfield County, but they felt they had to have all of Henrico to prevent it from growing all black, becoming like Washington, D.C.

MR. VENABLE: No further questions.

### 10. Testimony of Roger C. Griffin

Q [266] Mr. Griffin, for the record will you state your name, age and address, sir.

A My name is Roger C. Griffin, Jr. I am fifty years old. I am a resident of 9601 North Ridge Court in Richmond.

Q Within the City of Richmond, sir?

A The present city boundaries, in the annexed area.

Q What do you do for a living, sir?

A I am employed by Reynolds Metals Company. I am a professional chemist and author and I am in the capacity at Reynolds Metals Company as Manager of their Paint and Films Laboratory in the Packaging and Research Division.

Q Mr. Griffin, in February, 1970 did you have an occasion to go to a meeting with city officials at Willow Oaks Country Club?

A Yes.



* * *

Q [273] Would you indicate where on your notes the statements are and who made them.

A The place lettered with a capital B. To the right of that the designation is capital letter B. There are the initials H.B., an arrow and then some abbreviated language.

Q What is the H.B.?

A That was my note for Henry Valentine. I misinterpreted the name. I thought it was Balentine. H.B. instead of H.V. The shorthand notes, for clarification, R.F., Richmond Forward and then to the right of the doodle, keep city F.R., from, turning and the letters B.L. for black.

Q Do your notes indicate any other statements of the officials of the City of Richmond?

A If you go a little beyond halfway down the page where there is a circled capital letter C, Councilman [274] Forb, don't want Richmond become another Washington, D.C.

Q Does that refresh your memory as to what he meant by Washington, D.C.? Did he designate what he meant by that?

A I can't give you exactly his words but the intent of what he said was, we do not want Richmond becoming controlled by the black citizens the way Washington, D.C., has become.

Q Do your notes indicate any other statements that were made?

A Under the letter E, the lower left–I have tried to remember. I don't recall who in the room made this statement, but it was made by either one of the city officials present or by one of the other people of the

Richmond Forward group, but I jotted this down. The issue is, how to stop government by the have nots rather than the haves.

Q Did anybody explain that? Did they identify–

A It was not specifically stated who they are but it was generally agreed within the room I think without stating who, who they were referring to.

Q Who was it?

A They were referring to the poor people [275] of Richmond and specifically to the black citizens of Richmond.

### 11. Testimony of George K. Talcott

Q [306] Would you please state your name and age, please, sir.

A George Russell Talcott, age fifty-three.

Q Mr. Talcott, you are presently employed by the City of Richmond?

A That is correct.

Q In what capacity?

A I am an assistant to the City Manager.

Q When were you first employed by the city?

A I was first employed by the City of Richmond in 1962.

Q In what capacity was that?

A At that time the job title was Boundary Expansion Coordinator.

Q In that position was it your function to work, prepare exhibits, coordinate efforts for the two annexation suits under way against Chesterfield and Henrico County?

A That is correct. That is a correct summary.

* * *



Q [319] It is true, is it not, Mr. Talcott, that from October, 1968, up to the time that you were called upon to develop information on the Horner-Batley line, no one other than the attorneys made any request of you for information. Isn't that true?

A To the best of my recollection it could have been a casual question about this, how the case is going on, from most anyone.

Q But you were not called upon? You had no recollection of being called upon by anyone with the request, such as, let me have some information with respect to the annexation matter?

A I have no recollection of the development of any special information from a request, as you have described.

Q Do you have any recollection of Mr. Bagley's coming to you and asking for development of such [320] information?

A Yes, he did.

Q When was this?

A The exact date of the memorandum I believe is June 9, 1969. This was probably the day before that.

Q It is true, is it not, Mr. Talcott, when Mr. Bagley made his requests upon you he was asking your office for information with respect to a line that had already been drawn?

A Yes. That is correct.

Q This was what is now known as the Horner-Bagley line. Is that correct?

A Correct.

Q Did you furnish any information to the attorneys on a possible compromise prior to being called upon by Mr. Bagley for information on the specific line?

A I provided information of a financial nature, several weeks before the request from Mr. Bagley.

Q This too, sir, was in connection with the line itself, was it not, from trying to work out the figures, a formula, a price tag, to pay for the property?

A Yes. The major part of an annexation case is the financial terms and conditions.

Q Other than that, did you furnish any information to the attorneys dealing with the compromise?

A [321] A great deal of information was provided, yes.

Q Prior to being asked to provide information dealing with the Horner-Bagley compromise, were you called upon at any time by the attorneys to furnish you information on a compromise area?

A Not on any other compromise area, no.

**12. Testimony of Thomas J. Bliley, Jr.**

Q [330] Mr. Bliley, may I call you Mr. Bliley–

A Fine with me.

Q Would you state your name and your age for the record.

A Thomas Jerome Bliley, Jr. Thirty-nine.

Q Mr. Bliley, you were first elected to City Council in 1968, and you were Vice Mayor, reelected in 1970, and you are now Mayor of the City of Richmond?

A That is correct.

* * *

Q [334] Mr. Bliley, are you familiar with some reports received from John Ritchie of Richmond Forward which analyzed the 1966 and 1968 Council-matic elections, precinct by precinct, and gave a pretty detailed analysis?

A I am not familiar with the 1966, but certainly I have received a report in 1968.



Q It broke the precincts down pretty well and told you how each had voted and how everyone had fared and had a considerable emphasis on the race, whether the precinct was all black, whether it was mixed, whether it was white.

A That is right.

Q Do you know who instructed Mr. Ritchie to prepare such a report?

A No.

Q Do you know if this report was made available to all members of Richmond Forward who were elected to the Council in 1968?

A No. I don't know for a fact whether it was. I assume it was since it came from their office and was mimeographed.

* * *

Q [338] How about the opposition on Council to the Aldhizer amendment?

A What do you mean?

Q Two opposed it on City Council.

A I believe the vote was six to three, Messrs. Carpenter, Carwile and Marsh opposing the motion.

Q The three members elected by the Crusade for Voters, supported by the Crusade for Voters, opposed the Aldhizer amendment?

A That is right.

Q Why?

A You would have to ask them.

Q What did they tell you?

A [339] They said in the discussions, I believe they said the purpose of the Aldhizer amendment was to dilute the black vote.

Q In the discussions they told you this was their feeling.

A That was their feeling which they are entitled to.

* * *

Q [340] The question, Mr. Bliley, was at least at that point in 1968, surely you and every other member of City Council were well aware of the position taken by these three Crusade supported Councilmen, namely they opposed the Aldhizer amendment on the basis it diluted the black vote.

A In their opinion.

Q Isn't that correct? That was the basis for their opposition?

A That in their opinion, that it diluted the black vote, yes.

* * *

A [347] I never had any discussions with Jim Wheat about anything until I announced for Council.

Q When did you announce for Council?

A Sometime in late March or early April of 1968.

Q It was after that that you had occasion to discuss at length with Mr. Wheat annexation?

A I did not ever have any lengthy discussion with him other than from time to time, but I believe the city had to expand and I told him so. He knew it. He felt similarly.

Q Specifically, was it not yours and Mr. Wheat's concern—He is a member of Richmond Forward, is he not, incidentally?

A Yes, sir. He was a member of Richmond Forward.

Q And he had been elected to the Council several times as a candidate by Richmond Forward?



A That is right.

Q It is true, is it not, that after you had announced for an election in 1968 that you and Mr. Wheat had occasion to express your mutual feeling that if Richmond Forward did not gain control of Council in the election of 1968 that the annexation suit against Chesterfield [348] would be dropped?

A Yes.

Q You talked about that?

A Yes, sir, publicly, on a platform.

Q The only voter group opposing Richmond Forward of any significance is the Crusade for Voters, is it not?

A That is right.

Q Then your concern was that the Crusade for Voters may elect a majority to Council in 1968 and may simply vote to drop the annexation suit?

A That is correct.

Q That concern existed in 1968 and it was even more aggravated as one approached the 1970 Councilmatic election unless you had annexation? Isn't that true?

A It might be. Yes. I would say that it would be a terrific concern, yes.

* * *

Q [349] Mr. Bagley told you about it?

A Yes. He told me that he was meeting with [350] Mr. Horner from time to time.

Q Did you know for a fact he was not telling the three members of the Council supported by the Crusade?

A I never heard him say it, but I would say that would be a valid assumption.

* * *

Q So he had the approval of those six? I mean, Mr. Bagley was not out there negotiating as a guy. He was negotiating on behalf of the City of Richmond?

A I don't know that—Yes. I would say he was out there representing the six. I don't think he was negotiating. He was going out there, hearing what he had to say and coming back.

* * *

Q [356] This information that you wanted was not available at this meeting, was it? It had to be gotten later?

A Mr. Talcott said he would get the information. Some of it he had, but of course obviously he had to get some of it.

Q Isn't it true that about the only definite fact you knew at this meeting was that you could see the line and you knew the number of people. That is a true statement, isn't it?

A That is right.

Q Mr. Bliley, with respect to the Willow Oaks meeting about which you have heard some testimony today, the purpose of this meeting was to discuss the joining of forces of Richmond Forward, or some group composed of Richmond Forward with people from the annexed area known as T.O.P.?

A Yes, sir.

Q [357] Is it fair that within that purpose the primary purpose was to prevent a takeover of the Richmond City Council by the Crusade for Voters?

A The primary purpose was to win the election and elect a majority to Council.



Q Do you recall that discussion ensued to the effect that if the annexed people did not join with you the Crusade would takeover Council?

A I specifically remember discussing the point that they had three options. One, they could go it alone. Two, they could join forces with the Crusade or three, they could join forces with us.

Q The answer?

A The question?

Q Do you remember any discussion to the effect that if you, the people of the annexed area, don't join with us, there is the chance the Crusade or the black vote could gain a majority of City Council?

A That the Crusade elect a majority of the Council, yes. I think that was discussed.

**13. Testimony of Phil J. Bagley, Jr.**

Q [385] Would you state your name and age for the record, please.

A Phil J. Bagley, Jr. I am sixty-seven years old.

Q Mr. Bagley, how many years, total years, have you served on the City Council of the City or Richmond?

A I served sixteen years on the Council. Two years I was off, but a total of sixteen years.

Q Between 1960 and 1962 you were off?

A 1961 I was off.

Q Other than that, the years have been consecutive?

A Continuous, yes, sir.

Q You did not seek reelection in the 1970 Councilmatic election?

A That is correct, sir.

Q Mr. Bagley, were you ever Mayor of the City of Richmond?

A Yes, sir. I was Mayor and I was Vice [386] Mayor for two years and Mayor for one term. I served on the Planning Commission and various other committees during the course of the sixteen years.

Q You are pretty familiar with city government, is it fair to say?

A I would like to think so.

* * *

Q [394] That particular election, there were no overlapping endorsements. The Crusade did not support any of the six Richmond Forward candidates elected, and Richmond Forward did not support any of the three candidates elected by the Crusade. Is that your recollection?

A I think that is a matter of record, yes.

Q So at least from this exhibit we find there are three candidates on City Council, Messrs. Carpenter, Carwile and Marsh, elected by the Crusade for Voters.

A Yes, sir, that is right.

Q We can establish, can we not, the Crusade is predominately a black voter organization. Do you agree with that statement?

A Out of the three they supported two were white candidates.

Q I think my question was, though, it is primarily a black voter organization, that there is testimony in the record to that effect. Of course, you are not bound by it. Would you refute the fact that the Crusade for [395] Voters is a black voter organization?

A I think it is a major black vote organization.



Q Despite the fact they have from time to time endorsed white candidates?

A That is right.

* * *

A [423] I reported back to those interested in our boundary expansion.

Q The question is, you did not tell Messrs. Carwile, Marsh, Carpenter?

A No. They did not show any interest.

Q They were not entitled to participate in this decision?

A They were entitled to participate if they wanted to. They could work against it.

Q How could they participate when they did not know what was going on?

A They could work against boundary expansion with the Supervisors if they wanted to. I was working for it. It was two different approaches.

Q They did not even know what was going on between you and Mr. Horner.

A They could not know that. They could go and see the Supervisors like we did and talk against any expansion of boundaries.

Q Weren't they entitled to participate in this decision making process, Mr. Bagley?

A It was not a question of whether they were entitled. They were entitled to do anything they wanted. I was entitled to do anything I wanted, that I thought was for [424] the betterment of Richmond. I did it.

Q You were an elected representative, and in that capacity you were talking with Mr. Horner who was a representative of Chesterfield County.

A That is right.

Q You were trying to reach an agreement on a compromise. Correct?

A That is right.

Q In this connection, when you saw the views of members of City Council, you deliberately excluded Messrs. Carpenter, Carwile and Marsh from developments, didn't you?

A That is what you said. I excluded them. I would say rather that I included in the discussion those who were interested in boundary expansion. I was having enough trouble with Mr. Horner. It was not any use in bringing in those opposed.

Q They were sort of excluded by not being invited?

A That is your way of putting it.

Q What is your way?

A That I included those who were interested in boundary expansion.

**14. Testimony of A. Howe Todd**

Q [476] Mr. Todd, would you state your name.

A A. Howell Todd.

Q Where do you live?

A 1600 Wilmington Avenue, the City of Richmond.

Q What is your background as far as academic training in leading up to your specialty in City Planning?

THE COURT: Mr. Edwards, Mr. Todd is already qualified in this Court as an expert. Counsel may examine him on the voir dire.

MR. ALLEN: We will accept that.

MR. EDWARDS: May we say for the purpose of the record, just substitute his school, whatnot,



without asking the question? That is, so the record would have it.

THE COURT: All right.

MR. EDWARDS: Thank you, sir.

Q What positions have you held in the Richmond Metropolitan community since finishing college?

A I have been the Executive Director of the Richmond Regional Planning Commission and am now the Director.

Q [477] When did you serve on that?

A 1958 to 1960.

Q Go ahead.

A I am now the Director of Planning and Community Development for the city.

Q Were you with the city at the time the question came up as to whether it should undertake to expand its corporate boundaries?

A Yes, sir.

Q What part did you play in that?

A As the Director of Planning at that time I gave advice to the city administration. I was in favor of annexation and recommended it.

Q What were your reasons on the advice that you gave and why did you favor the annexation?

A I felt that the City of Richmond was in great need of expanding its boundaries.

Would you like me to develop that point?

Q I wish you would.

A All right, sir. Well, for over two centuries the City of Richmond has grown through annexations of one kind or another. The needs for the continued expansion of the city existed in 1960 and recent decades, and in the nineteen hundreds, I would say

there has been some change in the emphasis of the need but maybe an increasing need for [478] the city itself as well as just solving the problems of the area sought. But with the city hidebound by the corporate line that had been established seventeen years prior to this time with a considerable spill over of urbanization beyond the corporate line the city faced a seizure of stagnation and deterioration.

There were serious problems the city faced if annexation did not occur. The most physical, obvious, tangible, reason for annexation is the urgent need for additional vacant land. There is a serious shortage in the City of Richmond for vacant land. It is needed for housing. There should be a choice of housing types as well as a choice of sites on which to build housing.

Land was needed to allow expansion of commercial and industrial development. Land was needed if redevelopment and renewal were to in fact occur. Land was needed if there was going to be a growing tax base of the City of Richmond. Smoke stacks, industries, businesses are needed. They are very important and without the land available on which this development could occur the city is somewhat ham strung.

* * *

Q [487] Do you know whether any businesses were moving out, failing to expand within the city?

A Yes, sir, not only was there no new land for growth but in fact some of the industries because they were in old three story or loft buildings, they were looking for and moving to sites usually in the county areas where they could have modern plants, use of the fork lift and more space for parking, etc. I can



remember that I wrote a letter to the City Manager in 1968 listing a whole list of some twenty-four to thirty industries that have left the city because of this reason.

* * *

Q [491] Were there any other considerations other than vacant land that prompted you to make the recommendation [492] and was used in your judgment in fashioning the area to be taken other than vacant land?

A Yes, sir.

Q What was one of those?

A Another need for annexation was to recapture the spill over that had occurred across the corporate line. In fact, the City of Richmond was in the old corporate limits no longer included the real city. The automobile, for one thing, had caused this suburban expansion and there was a great deal of urbanization that had occurred since the last annexation. In the land immediately adjacent to the city but in both counties.

Quite frankly, I think the city expected that the slower this urbanization occurred the more urban it became and maybe the easier annexation might be when it was requested. The city had expected and anticipated annexation as it had done through the years as its form of growth.

If I can now turn to the next chart, please.

Q This will be D 34.

A D-34 is entitled, Richmond Metropolitan Population Trend. It shows the population growth of the Richmond Metropolitan area. This black line includes Richmond, Henrico and Chesterfield. It also shows in yellow the population growth through the decades from

1920 to 1970 [493] of the City of Richmond. I had mentioned the effect of the automobile. Right after World War II, especially when mortgage money was cheap and the G.I. bills, etc., were available, this being 1942, and the World War II in this area, you can see the very rapid explosion in the suburbs and the counties grow and the city in fact in the 1950s, from the 1950s on, begins to lose population.

These statistics are very significant, I think, in representing what took place. From 1900 until 1942 annexations were able to keep up with the suburban development. One hundred and twenty-nine thousand out of one hundred thirty-two thousand population growth in the Metropolitan area occurred in the city with only two percent of the growth from 1900 to 1942 occurring in the counties. But, from 1942 to 1968 just the opposite happened. When out of an additional two hundred twenty-two thousand people, population expansion, only two thousand occurred in the city. The remainder, the two hundred twenty thousand being reflected by the difference in these two lines in the latter decades of the draft.

All of this growth, we analyzed with our population spot maps and subdivision plat and found that in fact it was occurring adjacent to the city. We called it spill over by common termanology. From 1942 to 1968, the time of the Chesterfield annexation case, eighteen thousand [494] four hundred seventy-five residential lots were created within the five mile limit of the city. You will recall the five mile limit as the area within which the city has joint subdivision control. While only three thousand two hundred ten residential lots had been created within the city. Eighteen



thousand against three thousand. In the last eight years from the time of the annexation ordinances to the time of the case, only one hundred sixty-three lots were created within the city. In the last year, 1967, only twenty-seven lots. While in the county five thousand residential lots were established. This shows the swinging of the pendulum at this point with the mushrooming of the suburban area adjacent to the city and the falling off of the population growth within the city.

This is a very serious situation to a planner. It is serious because the city should in fact represent the true city, not just a portion, a part that is not representative. If I could have the next chart– Incidentally, from 1961 to 1968 while these lots were being created population was added to the annexed area equivalent to the size of the City of Charlottesville to show the rapidity and the speed of the urbanization taking place.

* * *

[502] Mr. Edwards, the other reason if you would like–

Q Go ahead.

A I have two or three other very brief statements. We are speaking to the needs and reasons for annexation, and I feel one of the reasons would be to correct the inequity and unfairness that does in fact exist. This is one social and one economic entity. I am not speaking to the city's limits but to the spread city affected by the automobile.

Because someone moves to our community and finds the home of his liking maybe two or three blocks

beyond an annexation line of some previous annexation Court, to me that does not say at all that he has no responsibility [503] for the welfare or the housing, the construction of public housing or the airport or the main library or many of the other central city expenses that show in fact be borne by the total community. Conversely, there are problems in the county that I think city residents equally should share in finding the solution to. I think there are people living in the counties that are interested in helping to make political decisions as to what should or should not happen in this community. They are involved and yet under the fractionated government can have no say.

Q Do you know the number of people in Henrico that make their living in Richmond or have their job in Richmond?

A The number of people, I don't know.

Q The percentage of those who have their jobs in the city? Do you recall?

A It was sixty-five percent if I recall.

Q Do you recall as to Chesterfield?

A No, sir.

### 15. Testimony of Alan F. Kiepper

Q [530] Mr. Kiepper, would you give us your name, please.

A Alan Frederick Kiepper.

Q Where do you live?

A 409 Henri Road.

Q In the City of Richmond?

A Yes, sir.



Q What is your present position with the city?

A I am the City Manager.

* * *

Q [531] Will you piease tell us why Richmond needed to expand its boundaries with reference to this annexation case in Chesterfield.

A Yes, sir. I think there are three.

Q Did you testify in that case?

A Twice, both trials.

I think there are three principal reasons why Richmond needed to expand its boundaries: The first of these dealt with the population imbalance that was occurring in the City of Richmond to which Mr. Todd has testified. The city was becoming a place of the very old and the very poor. It was losing its young affluent, what I called the leadership group. The reasons as I see them why this was so are those pointed out by Mr. Todd, housing, cheap land was in the suburbs. It was not available in the city and the automobile contributed to this.

This was resulting in a very serious population imbalance in the city. It is illustrated, for example, by the medium family income figures from the 1960 [532] census which showed the medium family income in Henrico and Chesterfield was $6200.00 whereas in Richmond it was only $5200.00 or twenty percent higher in the suburbs.

As has been pointed out by exhibit D 44, seventy-six percent of the families in the city, of the families in the Metropolitan area, with incomes of less than $3,000.00 were living in the city. Only twenty-four percent lived outside the city limits. This was

resulting in a number of things happening in the city. One of which was an increase in the cost of government, a very dramatic increase because the older and poorer families that were being left in the city were demanding more from the city government in a number of ways.

We were also losing a very key element in any community, what I would characterize as the leadership group, the owners of businesses, the young executives, those that normally play very, very vital roles in the life of a community. Much of our business was becoming absentee owned, but did not have a residence here. That is a bad situation in my judgment.

So this population imbalance with the poorer, those people requiring governmental services in the city, those more affluent contributing type citizens moving outside the city, this was causing several problems with potentially even more severe problems for the city.

[533] The second major factor to which Mr. Todd has also testified was the need for vacant developable land. He has pointed out that it had declined to six point four percent by 1968.

Some reference was made to the fact that firms were moving outside the city. I did ask Mr. Todd in 1968 to get me a list of firms, businesses, industries, that had formerly operated in the city that had moved out to surrounding counties. He provided me with a list of twenty-four such companies that he documented had in fact moved. He contacted a number of them and found that absence of land was certainly a major item.

* * *

[537] The third reason which I have alluded to previously on which I would like to elaborate. It has to



do with the increasing cost of government. This relates directly to the changing character of the population. We find expenditures for public health, public welfare, police, recreation, education, all have expanded and to a large extent these increases are directly related to the growth of low income population. I would like to refer to exhibit D 46 which is here on the easel which shows the increase in general fund expenditures from 1950 to 1970. Then on exhibit [538] 47 which refers to the increased cost of education. Also chart 46, the increased cost of police protection. Also in particular chart 49, the increased cost in public welfare expenditures. These have shown a very dramatic increase. In fact I would like to point these figures out to the Court on city exhibit D 45 which is in the blue binder which shows that during the period from 1960-1961 through 1969-1970 that the cost of public welfare in Richmond went from five point six million to seventeen million.

MR. VENABLE: Your Honor, not to interrupt the witness but there are no headings on this six columns of figures. I don't know exactly where he is.

THE COURT: Can you find that?

A I believe that was corrected and the columns were added. Mr. Talcott will give you a copy.

NOTE: Mr. Venable is presented with a certain paper writing.

A I am referring to the column on the right, Mr. Venable, which refers to public welfare expenditures.

Another factor in annexation or in the need for annexation involves examining what is happening to other central cities which are not able to expand. The facts [539] regarding land, such as Newark, Cleveland

and Boston are well known to people in the field of local government and those who have an interest. These cities are having great difficulty in financing government, retaining business. By looking at them, and from our experience, and for a longer period of time, I think we can reasonably see what is likely to happen in our own city. So in view of these facts it seems to me that there certainly was ample justification and motivation to move toward annexation.

As a matter of fact, had the city not done so in light of the experience of other cities, in my judgment, the officials could have been judged irresponsible.

* * *

Q [542] What effect did the increasing and the low income minorities in the aged population have on the city, and one thing further, and the decreasing of the middle class and the young white population?

A As I pointed out, there have been—The increase in the cost of government which is associated with the kind of problems that are found among low income population. I see this as not so much a matter of the particular color of the individual as it is what the specific characteristics that the low income population have. In other parts of the country the same conditions occur among low income Puerto Ricans in New York, low income Mexicans in Los Angeles, so that it is a problem associated with a low socio-economic level and not necessarily with the color of the individual involved. There is an important distinction to be made here, I believe. A very important distinction is to be made. What we are dealing with is the manifestation of the low income person in terms of governmental



services and not in terms of [543] color, for color's sake.

Q What would be the effect on the city if action were not taken to attempt to remedy these problems as you have related them?

A It is perfectly obvious that if the trends toward an increase in low income, dependent people, continues, and the more affluent continue to move out of the city, that the costs of government in the city and the resources available in the city to pay these costs are going to result or could conceivably result in fiscal bankruptcy.

I can illustrate with the City of Newark which now has thirty percent of its population receiving public welfare assistance. It is currently facing a $70,000,000.00 budget deficit in the current fiscal year. Newark is a city which is approaching social and economic bankruptcy. It is a city which has been land locked and has lost the overwhelming majority of its affluent middle class citizens. So that we must we conscious of the trends in other cities and apply these trends to our own situation in Richmond and react in an intelligent and forward way.

* * *

Q [573] But you had had occasion to talk with most of the other six members of Council, had you not, Mr. Klepper?

A My dealings at that point were almost exclusively with the Mayor in terms of providing him with factual information which he requested.

Q At that meeting only?

A No, no, not that meeting. I am talking about during the latter stages of the Horner-Bagley negotia-

tions. I was asked, please supply factual information about this particular area. This was done. So I do not know the extent of the communication between the Mayor and the majory of Council with the three minority members. I cannot say whether they were or were not involved as of that stage.

Q Is your testimony that prior to the Horner-Bagley line being finalized you were giving information to Mr. Babley?

A By finalize, I did not get into the negotiations until a line had been agreed upon.

Q But is that what you said in your prior answer? Wasn't your prior answer that you had been giving Mr. Bagley information all along?

A No, it was not. My prior testimony was that once the area had been determined–

Q I see.

A [574] I was asked, please supply information about this. There was a period between the time the line was determined and the time that it was made public. It was during that period of time that we were supplying factual information.

Q Right.

A But I was not a party to the determination as to where the line should be.

Q You did not give Mr. Bagley any information, any you do not have any recollection of anybody on your staff giving Mr. Bagley any information prior to that line being determined, do you, Mr. Kiepper?

A Not in detail about that particular area. Our principal participation was after the line was determined.

* * *



Q [586] And to me, that is saying that unless we get annexation our city could go bankrupt. I may not know much about economics but correct me, isn't that economics? Isn't that saying–

A Mr. Allen, that is not the only thing I said. My first point was, and the major point I tried to make, was be concerned for population imbalance.

Q I don't mean to say that it was your personal opinion, Mr. Kiepper. I am saying that you emphasized in this Courtroom yesterday that the paramount problem was economics. Isn't that a fair statement of your yesterday's testimony?

A I have tried to explain, Mr. Allen, the problem of population imbalance and economics are just inexorably entwined. You cannot completely separate them. This is not a matter of taking each problem and putting it [587] in a little box and tying it up and saying this is all by itself. Economics is tied to people because people earn income. People pay taxes. People depend on municipal services. So the two are related.

A city is composed of people, not just economic forces in some sort of limbo, interaction of people, and their income, and the way they consume public services, the total service is the impact on the community and the impact on city government.

### 16. Testimony of Nathan J. Forb

[707] BY MR. DAVENPORT:

Q Will you state your name and address, please, Mr. Forb.

A Nathan Joseph Forb, 402 Harland Circle, Richmond, Virginia.

Q What is your business?

A I am Chairman of the Board of the Republic Lumber and Building Supply Corporation.

Q In Richmond?

A Yes, sir.

Q Are you a member of the Richmond City Council?

A Yes, sir.

* * *

Q [717] Would white resources and the white material have anything to do with that?

A People.

Q People. White people?

A To expand the city boundaries, sir.

Q But white people?

A Absolutely.

**17. Testimony of James C. Wheat, Jr.**

Q [34] And you were against compromise, weren't you, Mr. Wheat?

A Yes, sir.

Q Against the compromise because it didn't give the City enough vacant land?

A That is correct.

Q Did you make your views known at this meeting?

A I do not know whether I made them known at this meeting, but I made them known at a later get-together when I was asked to meet with some of the Council.

Q I see.

THE COURT: I take it you were not on Council at this time?



THE WITNESS: No, sir. I went off in March '69, sir.

THE COURT: That is what I thought. I wasn't sure.

[35] All right, sir.

BY MR. ALLEN:

Q And who agreed with you, Mr. Wheat, that you could now recall that the compromise was inappropriate because it didn't give the City enough vacant land? Do you recall anyone on Council agreeing with you? Let me ask you that question.

A I do not recall anybody on Council.

Q They all disagreed with you?

A I don't say they disagree with me. I just don't recall the positions of the various men on Council at that particular point in time.

Q Okay.

Do you recall discussing with them and pointing out why you didn't think the City had enough vacant land?

A No, not as to the specifics of it, no, sir.

Q Okay.

Well, did you point out generally then what your objection was?

A As I recall, my major objection was the question of vacant land and the late stage of the annexation suit. Also the question of the financial settlement which, to me, has been important in all of these transactions.

Q I see.

[36] Never convinced you, did they, Mr. Wheat, that there was enough vacant land in this annexed area, did they?

A I don't recall they ever convinced me there was enough. I am not sure what enough is.

Q In your opinion at the time there wasn't enough elbow room for the City, is that correct?

A This was not the only point in my opposition.

I say my opposition was based on the line, so-called, that was produced. The vacant land. Secondly, it was because it seemed to me that the Court decision was imminent. And two of the three things that I started working for in 1965 had been dissipated.

Q In other words, the money had been spent, the antagonisms had been raised, and it was too late to come up with a salvage job on those two and the only conceivable reason to compromise was to avoid the prohibitive award from a cost standpoint?

A Well, this is your statement, sir.

Q Well, is it a fair summary of yours?

A No. My statement is that I would have opposed it because of land, basically. But it also was because of the cost having been dissipated and the discord having been created. But basically it is a question of land.

### 18. Testimony of Leland Bassett

[164]BY MR. VENABLE:

Q Mr. Bassett, for the record would you state your name, age, and your address, please, sir?

A My name is Leland Bassett, 6601 Greenvale Drive. I am 33.

Q Mr. Bassett, do you hold any position in a political organization at the moment?

A Yes, I do. I am a member of the Executive Committee of the Team of Progress.



Q In 1968, specifically in the fall of 1968, were you a member of any civic association, and if so what was it?

A [165] I was a member of the Westlake Hills Civic Association. I was one of the members of the Board of Directors.

Q Are you familiar with Mr. Phil J. Bagley? Do you know who he is?

A Yes, I am.

Q In 1968 did Mr. Bagley, to your knowledge, hold a political office?

A Yes, he did.

Q What was that?

A I believe he was Mayor of Richmond.

Q When was the first time you met Mr. Bagley?

A In the fall of 1968.

Q How was he introduced to you?

A We were seated next to each other at a football game in Charlottesville and we introduced ourselves to each other.

Q Did he introduce himself as the Mayor of the City of Richmond?

A I don't specifically remember if he made mention of that, but I was knowledgeable of who he was and if I am not mistaken he may have even had a name tag on.

Q Did you engage him in conversation, sir?

A Yes, I did.

Q [166] Did you have occasion in that conversation to discuss annexation?

A Yes, I did.

Q Specifically the annexation of Chesterfield County by the City of Richmond?

A Yes.

Q Was the suit going on at that time?

A I don't recall whether the case was actually in court at that time or whether it was about to go to court.

Q What was your conversation about?

A Our conversation generally was in relation to our civic association. We were involved in setting up a meeting in which to discuss the pros and cons of annexation and it was my job as a member of the Board to find two speakers, one to speak on behalf of the City's position and the other to speak against annexation.

Q Your civic association, was that in the annexed area?

A That is correct.

Q All right. Continue, sir.

A So I thought it was an excellent opportunity to see if Mr. Bagley would speak on behalf of the City and I approached the subject with him. He indicated that he would be happy to speak at our association provided the date that we [167] had set on our calendar did not conflict with his schedule.

He suggested that I check with his secretary on Monday morning to see if it would fit into the schedule.

Q All right.

Mr. Bassett, during this conversation with Mr. Bagley, with Mayor Bagley, did you have an occasion to discuss racial percentages in the City of Richmond and any trends of racial percentages in population?

A We didn't speak specifically of trends and racial percentages in Richmond per se, but we discussed the



annexation issue in general and somehow the conversation got around to the City of Washington, D.C.

Mr. Bagley indicated that he had either gone to college there or lived there 20 or 30 years ago and made mention of the fact that he was somewhat shocked to see the great shifts in racial trends that had taken place between the time he lived there and the present time. That was 1968.

Q Growth of the black people in Washington, D.C.?

A Primarily, yes.

Q Did he equate the growth of black people in Washington, D.C., to a similar growth in Richmond, Virginia?

A Not specifically from that statement to another, no.

Q Was that your—was that the sense of the [168] conversation, though?

A The general sense. The implication that I drew, let's put it that way.

Q Could you have drawn any other implication?

A I don't believe so.

Q Did the Mayor tell you what was going to happen in Richmond?

A Well, he made one statement which I guess more or less would answer that question. His statement to me shortly after the conversation about the Washington aspect of our conversation, he made a statement, as best I can remember, something to the effect, "As long as I am the Mayor of the City of Richmond the niggers won't take over this town."

Q Did he use the "nigger"?

A Yes, he did. I specifically remember that.

* * *

**19. Testimony of Henry L. Marsh, III**

[174] BY MR. VENABLE:

Q Mr. Marsh, in the course of this trial Mr. Todd and Mr. Kiepper have talked about the reason for annexation was that it was necessary to annex to serve and solve Richmond problems. Do you agree with that statement?

A No, sir. I do not.

Q Why not, sir?

A Well, I think that it has been obvious that the reasons for the annexation were to dilute the black vote as well as some other things. And I do not think the problems would be solved by annexation, as I testified on direct examination. I think there are other ways of solving the problems.

* * *

[179] So annexation, in my view, without changing the [180] priorities, would make the situation worse, not better.

Q Can you tell us, Mr. Marsh, if you know of anything about the amount of industrial land the City actually got down in this annexation compromise?

A Well, I think the timing of the annexation, if nothing else, reveals the purpose. The annexation was—the trial was shortened. The timing was staged as a way to head off the 1970 elections.

The trial was going on and there was no way the annexation could have been finished because in Virginia they are only final on the first of the year, in time for the '70 elections. So unless a compromise was worked out to get that compromise the City had to give up the vacant land and the vacant land was in the part of the



annexed territory that was rejected and not in the part that was granted, the substantial vacant land.

The industrial complexes were in the part of the annexed territory. Part that was being sought was rejected, that was turned down. For example, there was a prime piece of industrial land at the tip near Dupont. That was given away. In addition to Dupont being given away in order to get the compromise into effect. There was about 100 acres of prime industrial land with some industries already on it and the line ran around along Walmsley Boulevard and [181] missed that entire piece of property.

Now, if the City had been concerned about getting industry or land suitable for industry they would have included that in the proposition. That was given up.

In the master plan deliberations, the only industrial site that was zoned in the new master plan was a little tip which is about four or five percent of the entire area.

The rest of it was zoned for housing and commercial, but primarily for housing. Very little industrial land in the award. And most of the prime vacant land was in the part of the territory sought that was legt within the County. So I don't think the request for vacant land was the cause. Otherwise the compromise award would not have been accepted.

Q You said something about timing and I don't think I understood you. I understand that annexation takes place on the first of each year. But you went into vacant land after that. What do you mean when you said the timing indicated this was the purpose of the compromise to dilute?

A I don't think it is any secret that the appeal–it was obvious that the County residents would appeal and the normal appeal process takes four and a half months. You have four months to lodge the appeal. And then normally three or four months before the Court acts. It would then–normally [182] you can petition for a rehearing after that. So that would have gone over into the next year. So the compromise was the only way in which the award could be effected in time for the 1970 elections.

* * *

Q [192] When you had conversations with Mr. Valentine and Mr. Daniels, did they represent to you that they or the group they spoke for controlled City Government?

A Yes. I think they indicated that they–that a new element had assumed control of Richmond Forward and that it was more enlightened and that they wanted to discuss with us the possibility of working something out.

MR. VENABLE: May I continue, Your Honor?

BY MR. VENABLE:

Q All right. In these conversations were they discussed–was annexation discussed?

A Yes.

Q Was the political ramifications of annexation discussed?

A [193] Yes.

Q And what was that political ramification of annexation?

A That once annexation had been achieved that there would be more white voters in the City and that



the objectives that I said I wanted to accomplish could not be accomplished unless I cooperated with them.

Q This cooperation with them, what did that entail?

A Well, not running as independent, running on a Crusade–I mean a Richmond Forward ticket.

* * *

Q [195] Welfare has been mentioned as a very serious problem in the City of Richmond and there has been brought out in testimony that welfare–the City bears less than 20 percent of the total welfare costs. In other words, expenses. is that your knowledge of the fact?

A Well, I think at the last year the City welfare, total welfare budget, was about 26 or 27 million dollars, but only about 21 or so of that was from federal and state sources. I don't think that is a major cause of the City's [196] problems.

Q But it did cost the City about what, four or five million?

A Well, probably cost the local share, I believe, around six million dollars altogether.

But the point I would like to make is that those welfare dollars are dollars that turn over three or four times in the economy and in which you are talking about almost 100 million dollars turning over in the economy each year as a result of a large infusion of state and federal funds coming into the economy. And I don't think that with the small local share involved, five or six million dollars out of a total budget of 130 some million, the resulting impact on the economy, that the welfare is a problem that it is made out to be.

I think it is overused and misrepresented and misstated to the public.

Q Mr. March, you testified earlier that of exclusion from certain meetings dealing with annexation and decision-making process. It is true, is it not, Mr. Marsh, that before a vote of Council is taken you are notified and have the opportunity to be there to cast your vote?

A That is correct.

Q How often are you invited to participate in the decision-making process that went into the introduction [197] of that which you voted on?

A Well, I think it is a known fact that I have not been permitted, at least during the period of time leading up to annexation, to participate in many of the decisions that were made prior to the formal introduction or the formal vote in the City Council. On many of the areas of important concern, especially those dealing with boundary expansion and expressway and other vital areas.

Q Do you consider your vote at City Council to be participation in the decision-making process?

A No, I do not.

## B. Transcript from *Holt v. Richmond*, 334 F.Supp. 228 (E.D. Va. 1971), (*Holt I*), of Hearing dated October 19, 1971.

### Testimony of Alan F. Kiepper

Q [40] All right, sir.

Now, you were going into another subject.

A Yes, sir.

I wanted to comment on the effect on the school system of de-annexation.



The ratio of white to black students in the Richmond public schools has been decreasing for many years. This current school year has seen a loss of some 4,000 white students. De-annexation will require immediate and major additional changes to the City's programs for school assignment, or it will preclude the maintenance of a reasonably integrated [41] system.

Although exact data is not available at this time because spot maps have not yet been prepared, upon de-annexation it is the best estimate of the Superintendent of Schools that the schools' enrollment or the average daily membership in the Richmond public schools would drop from approximately 45,000 to approximately 39,000, or a loss of some 6,000 students.

Virtually all of whom would be white. This would result in a school system with a ratio of 80 percent black and 20 percent white, and such a ratio would make it impossible to maintain any kind of reasonable semblance of a unitary school system within the remaining City.

* * *

A [113] Yes, sir. It is part of it.

Q I will tell you the reason I asked you that is I questioned the 509. I did not question the demotions.

A I see. Thank you, sir.

Q In terms of the City's operating budget, Mr. Kiepper, it is your responsibility as city manager, I gather, to prepare such a budget?

A Yes, sir, it is.

Q To do so I would imagine, and I don't mean to simplify it, that you have to determine the cost of

services and you have to have some idea of what the revenue is going to be?

A Yes, sir.

Q Now, can you give me or tell me what the revenues were for the annexed area in 1970-'71?

A Yes, sir. I think I can. If you give me a minute to refer to some work papers.

Yes, sir. Our estimate of revenue for the fiscal year 1970-'71 for the annexed area was $13,527,115.

Q I am sorry. Could I have that again?

A $13,527,115.

Q Okay.

How about '71-'72?

A $14,518,666.

* * *

[117] service? Now, if I am wrong, other than real estate taxes, show me where.

A Well, let me—I am going to have to explain how we budget. We budget on a July-June fiscal year. We estimate we have revenues to be received within that 12-month period.

Now, what I am saying to you is that a disproportionate amount of our revenues fall due in the last six months of the year. The largest single source of revenue to the City is the real estate tax.

Q In the last six months of the fiscal year, but not the regular year?

A Well, wait a minute. But you said if annexation, de-annexation took place on January 1, 1972, we would end up having spent at a normal rate for the first six months, but we did not collect revenues at a proportionate rate for the first six months and we



would end up with approximately a $3,000,000 deficit in terms of revenues as compared to expenditures.

Q Well, let me ask you this. On page eight of your Appendix A—

A Yes, sir.

Q —the last sentence of the page says, "It is estimated the adverse net effect on the City's 1971-'72 [125] City.

* * *

A But I can tell you this work is spent or under [126] contract.

Q Do you know what the philosophy of the state payment program is for this road work?

A Do I know what the philosophy is? No, I don't know. I would like to understand it more if you can tell me.

Q Are you aware that the state does this work for the County?

A Yes.

Q Are you aware that the philosophy is that the City is going to do its own work and the state formula is designed to reimburse them in full for it so that the City is treated like the County?

A Well, that may be the philosophy but it doesn't work out that way in fact, Mr. Allen. And I don't think any city in Virginia will tell you that the state payment fully covers its street maintenance work. City streets take a much more severe boating than do rural county roads.

Q On page eight of the operating budget figures you mentioned $539,000 being an amount which health and welfare services are expected to cost. Do you see that figure?

A What page are you on, sir?

Q Page eight.

A Yes, sir.

Q Approximately 80 percent of that is paid for by [127] state and federal funds, is it not?

A No. About 80 percent of the welfare expenditure is paid for by the state, but state and—state and federal government. But only 55 percent of the health expenditure, in fact something less than that because there are some local health services that are 100 percent City financed.

Q So that figure there of perhaps approximately 55 percent of it is funded from state and federal sources?

A Approximately.

Keep in mind the way that we budget. We bring in all revenues and appropriate out all expenditures so that we have funds coming in for other functions as well. And we appropriate gross amounts.

Q Mr. Kiepper, if de-annexation is ordered and becomes effective January 1, 1972, then the City as of that date will cease to provide these services that you have been mentioning to the annexed area, is that correct?

A I would assume that that would be true, yes, sir.

Q Now, in terms of the $13,000,000 that you have appropriated then for the annexed area, physical and people-oriented services, I gather a lot of that, a substantial portion of that amount would then be free to put into other areas, is that correct?

A Well, no, sir. If we are going to lose revenues [128] also we would have to terminate expenditures to the best of our ability.



Now, in the case of equipment purchases, they very probably have already been made. In the case of salaries we could terminate expenditures by immediately terminating the people on January 1. That would be where the majority of the funds would be.

Q If attrition and vacancies and the County absorption doesn't take care of it?

A They are not going to take care of it by January 1, Mr. Allen. No way in the world it could possibly make a dent in it in that period of time.

Q Mr. Kiepper, you referred in your opening sentence on the operating budget as follows: "De-annexation would create havoc with the City's operating budget."

A Yes, sir.

Q Do you see that?

A Yes, sir.

Q But nowhere do you say that the problems that the operating budget would be caused could not be solved. You don't see that statement anywhere in there, do you?

A What was that again, Mr. Allen? I am not sure I understand your point.

Q You state that de-annexation would bring havoc [129] upon the City's operating budget?

A Right.

Q I don't see where you say in there that these problems could not be solved.

A Well, I think the only way they can be solved is to lay off the 500 people that we previously discussed, to demote the 180 people that have been promoted, to cancel as many expenditures for fiscal improvements as possible, and equipment, do everything we can to cut

back expenditures because of the revenue that we will lose. And that, in my judgment, would be havoc.

Q And the possibility—but still this can be done?

A Of course it can be done. It would have to be done under the City charter.

Q And a substantial alleviation could come about in the event there were some vacancies in the City government and in the event the counties came in and agreed to take over some of these contracts which could substantially alleviate the problems with the operating budget, could it not, Mr. Kiepper?

A Well, that is a question of judgment, Mr. Allen. I think it would be unlikely to be substantial, certainly as far as personnel are concerned.

Q [130] And it is your testimony then that you really can't see any alternative but to dismiss these 509 people and to do these other things that you have talked about. No other reasonable alternative, is that your testimony?

A Mr. Allen, the charter requires the city manager to keep the budget in balance. The City of Richmond cannot operate at a deficit and if a deficit position were forecast, which it would be as a result of de-annexation on January 1, we would have no alternative but to take the type of drastic step that you have just enumerated and that I have enumerated.

Q Are you making money off the annexed area now? Does it show a profit?

A No, sir.

Q You are losing money off it?

A Yes, sir.

* * *



## II. Transcript of Testimony in *City of Richmond v. United States et al.*, from Hearing Before Special Master Held October 15-17, 1973.

### Testimony of Thomas J. Bliley, Jr.

[49] DIRECT EXAMINATION

BY MR. RHYNE:

Q Will you state your name and address, please?

A Thomas Jerome Bliley, Jr. 408 Henri Road, Richmond.

MAGISTRATE MARGOLIS: Would you spell your last name for the record, please?

THE WITNESS: B-l-i-l-e-y.

MAGISTRATE MARGOLIS: Thank you.

BY MR. RHYNE:

Q Would you state the position that you now hold with the City of Richmond?

A Mayor of the City of Richmond.

Q When were you elected as Mayor of Richmond?

A I was elected as councilman and took office on July 1, 1970, and at a caucus of Council on that date I was selected by the Council to serve as Mayor.

Q When were you first elected as a City Councilman of the City of Richmond?

A 1968.

Q And have you served continuously as a Councilman from that time until now—until you were elected as Mayor?

A Yes.

* * *

Q [58] Mr. Mayor, did there come a time after the filing of this lawsuit which was based on asking the

Court to approve election at large when the City of Richmond changed that policy and you and the Council proposed to this Court a ward plan?

A Yes, sir.

Q Will you state the background of that?

A Another case was before the district court involving the City of Petersburg and the Justice Department when the Supreme Court affirmed the decision of the district court for the Three Judge Court for the District of Columbia, the decision which said that Petersburg had to go to a ward system.

Our attorneys requested a meeting with council, the City Council. We met, the City Attorney advised us that in their considered opinion the City should submit a nine ward plan.

Whereupon, we had a plan prepared—several plans. We held a meeting of the City Council. No conclusive vote was taken. It was a tie vote with one member being absent. However, the consensus was that we submit it.

The City Attorney did submit the plan to the Justice Department, and it came back from the Justice Department with [59] a modification to plan.

Whereupon, Council, again had approved the plan, nine ward plan. I believe that looks like it over there on the board.

Q Mr. Mayor, I'm going to hand you what has been marked as Exhibit Number 15. All parties have a copy of this. If they do not, I will be glad to furnish them copies at this time.

MAGISTRATE MARGOLIS: All right.

MR. RHYNE: Are there any parties that do not have any copies of Exhibit 15? If you'll hold up your hand we'll furnish it.



(No response.)

MAGISTRATE MARGOLIS: I think I'd like to mark it for our record, Mr. Rhyne.

MR. RHYNE: Shall we mark them, Your Honor, in the way they've been marked in the record up till now, which will be "Exhibit 15"?

MAGISTRATE MARGOLIS: All right. I presume you're going to introduce 1 through 14 a little bit later too?

MR. RHYNE: Yes. Yes.

MAGISTRATE MARGOLIS: All right.

MR. RHYNE: If the Clerk then would mark the piece [60] of paper I've handed to Mayor Bliley as Exhibit 15, please, for identification?

MAGISTRATE MARGOLIS: All right. We'll mark it as Exhibit Number 15.

(Whereupon, the document was so marked as Plaintiff's Exhibit Number 15, for identification.)

BY MR. RHYNE:

Q Now, Mr. Mayor, is this Exhibit 15 which I've handed to you the nine ward plan that you referred to as the one that was approved by the Council after the Department of Justice suggested some changes in your earlier plan?

A Yes, sir.

* * *

Q [87] Mayor Bliley, I show you what has been marked as Defendant's Exhibit 2 and Defendant's Exhibit 3—[handing exhibits to the witness]—which it has been stipulated are the maps from May of 1971.

[88] Could you very briefly explain what each of these exhibits is?

First, Defendant Intervenor's Exhibit No. 2.

A. No. 2 is a division of the city into six wards.

And No. 3 is a nine-ward plan.

Q Now, Defendant's Exhibits 1, 2, and 3—which you have before you—are the three maps which the City Council had in May of 1971. Is that correct?

A I assume so, yes.

Q And what happened with these maps?

A The Council did not wish to consider—the majority of the Council at the time did not wish to consider a nine-ward plan.

So, they asked the City Attorney to take the others to the Justice Department to see if they would approve one of the three.

I think there was another plan—which is not in here—that had four wards and five at large.

Q This is in May of 1971?

A Right.

This was subsequent to our meeting with Mr. Norman.

Q And they were to be presented to the Department of Justice?

A Yes.

Q [89] And then did there subsequently come a time when a map containing two wards was prepared?

A The two-ward plan, the first time I saw that was when the intervenor in Holt 1 presented a two-ward plan to the District Judge in Holt 1 as a remedy. That was the first time that I had seen it.

Q And approximately when was that?

A That was in, I think, November of 1971.

Q Calling your attention to late October 1971—specifically to October 25, 1971—do you recall a City



Council meeting at which Mr. Valentine made a motion that the City Council instruct its attorney to present to the Federal Court a map of five wards and four at large—being one of the maps that you have in front of you—and as a second possibility that the City Council instruct its attorneys to also present to the Court the nine-ward plan that you have in front of you?

A I remember the motion. The date could have been October the 25th or some other date. But—I mean, I don't remember the specific date.

But there was such a motion. And I assume that Mr. Valentine made it. He could have—or one of the other members of the Council.

Q Do you recall that pursuant to a motion by Mr. Carwile the motion by Mr. Valentine was divided into two [90] parts: first, a vote on the five-ward plan and then on the nine-ward plan?

A Yes.

Q And do you recall the Council subsequently voted separately on a five-ward plan and a nine-ward plan?

A Yes.

Q What happened with regard to the five-ward plan?

A The five-ward plan was approved, as well as I remember.

Q And what happened with regard to the nine-ward plan?

A The nine-ward plan failed the first time, was reconsidered twice at the meeting, and finally passed.

Q And isn't it true that the nine-ward plan when it finally passed was—the instruction was to present the

nine-ward plan to the Court only as a remedy of last resort?

A I believe that is correct. That was the intent.

Q So, the strong preference of the Council at that time was for a five-ward plan—and not a nine-ward plan.

A Yes, sir.

* * *

Q [95] Mayor Bliley, we have now looked at a large number of maps. And you have testified that you had various maps that were discussed in October of 1971 and that a Council resolution was passed directing the City Attorney to present a five-ward map to the Court in Holt 1—and only as a last-resort remeby to present a nine-ward plan.

Is that true?

A Yes.

* * *

Q [96] Now, after the October 1971 meeting, at which time the Council reluctantly directed the City Attorney to present a nine-ward plan—

MR. RHYNE: He didn't say anything about "reluctantly," Your Honor. He is misquoting him.

BY MR. PARKER:

Q —as a matter of last resort directed the City Attorney to present a nine-ward plan and, as a preface, directed the City Attorney to present a five-ward plan—isn't that true?—

A Yes, sir.

Q After that meeting, when was the next time at which you—you as the Mayor or you as a City Councilman—became [97] involved in a discussion of



possible ward plans and dividing the City of Richmond into some four or more single-member districts?

A To the best of my knowledge, Mr. Parker, this was sometime in February of 1973—sometime around the 15th of February, give or take two weeks.

Q Of this year?

A Of this year.

Q In other words, between October '71 and February '73 you had no discussion with regard to possible single-member-district plans involving the City of Richmond?

A That is right, sir.

Q Did you have any discussions with anyone on this subject during that time?

A I talked to some citizens committee about it. They asked me about it.

But we never discussed it at the Council.

Q In your talking with citizens—can you remember any specific conversations—

A No.

Q —you had?

A No, I can't.

Q You say that you may have had some.

[98] Do you think you had some? Or do you think you—

A I think it is possible. But I can't remember any specific conversation, Mr. Parker.

I talk with citizens every day.

Q And, so—

A A number of them.

And we talk about a lot of things. And one of the chief questions, you know, is, "When are you going to have an election?"

Q Do you remember–then, I take it, since you are merely speculating that you had such discussions–which sounds reasonable by virtue of your position–I take it that you can't remember the substance of any such discussions.

A No, I couldn't. No, I couldn't.

Q Now, coming to February of this year, when you first discussed again ward plans, what was the context of that discussion?

A My basis of that discussion was, following the Court's decision in the *Petersburg* case and the affirmation of that decision by the Supreme Court, our attorney requested a meeting with the City Council.

A meeting was arranged. And our attorneys recommended that in light of the *Petersburg* decision that we submit a nine-ward plan to the Justice for approval–and to this Court.

[99] At that time it came to my attention that a nine-ward plan could possibly be drawn in which you didn't have any of the wards to cross the river. And I asked, certainly if it could be done that such a plan be prepared.

Q How did it come to your attention that such a plan could be drawn?

A It came to my attention from the City Attorney.

Q And the City Attorney is "who"?

A Mr. Conrad Mattox.

Q And specifically how did you–could you give me a little more detailed insight as to how this came about?

A It came about because of recent–as he explained it to me, there were recent court decisions which said that you didn't–the "one-man/one-vote" rule was not



as sacred as–at least you could have greater deviation in the number of people in a ward and, because of that, it would be possible to draw a nine-ward plan that didn't cross the river.

Q Did you–this discussion that you had where this came to your attention, who initiated this discussion?

A The City Attorney, Mr. Mattox.

Q And what was the context of it?

You were sitting in your office one day. And Mr. Mattox came in and said, "Say, have you heard about *Petersburg*?"

Or what?

A [100] No. He proceeded with the *Petersburg* decision separately.

He–I don't know whether he passed me in the hall or just where I saw him. It might have been at a Council meeting. I can't remember the exact location.

But he told me that this was possible.

I said, "Well, if it's possible, let's have the planners draw the map."

He said, "Okay. And they are working on it."

Q He said, "Okay. They are working on it"? Or, "Okay. We will have them work on it"?

A Well, I don't remember the exact words. It could have been, "They are working on it," or, "they will work on it."

In any event, they did. And they did produce it.

Q And this, to the best of your recollection, was in February of this year?

A Yes, sir.

Q And what–do you remember, did he tell you what the decision was with regard to "one-man/one-vote" that caused this?

A He may have. I can't remember the exact decision.

Q Well–

A I am not–you know, "decisions." I am not a lawyer.

Q Specifically, did you get into a discussion of percentages of variation among wards at that time?

A. [101] No.

Q So, all he said was–paraphrasing–"There has been a decision which allows us to deviate from a strict 'one-man/one-vote.' So, why don't we have a nine-ward plan that does not cross the river."?

A. No. I don't think that is a correct paraphrasing.

What he said was, because of a decision you could draw a plan which had nine wards of which three of them were south of the river and six of them were north and none of them crossed.

I said, "If such a plan could be drawn, I would like to see it. And I am sure the Council would."

Q You had not had any discussions prior to that time with regard to a plan which did not cross the river. Is that correct?

A No, sir.

I was under the impression it couldn't be done.

THE COURT: "It could not be done"? Is that what you said?

THE WITNESS: It could not be done because of the "one-man/one-vote."

BY MR. PARKER:

Q When had you formed that impression?

A Right from the start. They indicated they had to have the wards almost mathematically exact as far as the numbers of people each contained.



Q [102] Who is "they"?

A The planners.

Q Which planners?

A Mr. Todd and his staff.

Mr. Todd at that time was Director of City Planning.

Q And he told you that you had to have plans that were almost mathematically equal because of the voting?

A That is my knowledge as to what he said.

Q And when did he tell you that?

A In May of 1971, when we first began the discussions of ward plans.

Q And did you discuss with him what sort of deviation would be required from "exact" quality if you did not cross the river?

A No.

Q Were you aware at that time that there were 163,571 people who lived north of the river?

A No, I wasn't.

Q And, so, you were not either aware that that there were 85,870 people who lived south of the river?

A No.

Q And, taking it from that, you would not have known that on a mathematical basis you could have drawn nine wards respecting the river and have a maximum deviation of "4.9 percent"?

A [103] No. I really don't.

* * *

Q So, you were not aware of what sort of deviation would be required to cross the river?

A No.

Q Were you aware of the deviation in ward size within the plans that were drawn?

A Well, they had the numbers of people in them. And I knew that there was a difference in the deviation.

Some of the maps that I had seen had—they showed the deviations on the maps. But I didn't pay a specific amount of attention to it, because I am not a demographer and I didn't—I would know how to start to draw a ward plan.

Q Then, I take it, as a result of your discussion with Mr. Mattox you instructed—or somebody instructed—the planner to draw a nine-ward map in the spring of this year with respect to the river.

Is that correct?

A [104] Someone did. I didn't.

I didn't "instruct" him. I just asked, if one was possible. I certainly would like to see it.

Q You asked Mr. Mattox that?

A Right.

Q Did you ask anybody else?

A No. I did not discuss it with anybody else.

Q So, you did not discuss it with the planner, yourself?

A No, sir.

Q And subsequently was a plan produced with respect to the river?

A Yes.

* * *

Q [112] When—as a matter of fact, when the City Attorney went to the Justice Department he submitted four plans, did he not?

A He may have.



Q Your resolution did not call for any particular plan. It merely called for a plan dividing the city into nine wards. Is that not correct?

A Right.

But he generally knew which one the Council favored.

* * *

Q [113] Mayor Bliley, you testified in response to my last question—or a recent question—that the City Attorney was instructed to present a nine-ward plan to the Department of Justice. Is that correct?

A No.

The City Attorney indicated that he had sufficient [114] instructions on which to proceed. Since he worked for all nine members of the Council and since five of them favored this course of action, he felt that he had sufficient instructions.

Q Did you subsequently—do you know what he subsequently did?

A Yes.

He went to Washington and submitted the plans. He came back with a modification to the plan we submitted, at which time the Council met again and approved the plan for the—that I believe is Exhibit 15—that divides the city into nine wards and has the approval of the Justice Department.

Q Now, you have said that he went to the Justice Department with "plans."

He took four different nine-ward plans to the Department of Justice. Is that not correct?

A I suppose. Yes.

Q And you have testified that he did this contending that he had instructions from sufficient Councilmen to do that?

A That is right.

Q I show you what has been marked for identification as Defendant Crusaders' Exhibit No. 11. [handing exhibit to the witness.]

Can you tell me what that is?

* * *

Q [118] Now, calling your attention once more to the March 27th meeting:

You testified that citizens spoke and that there was stiff opposition to a nine-ward plan.

A Yes, sir.

Q What else did citizens speak about?

A Well, the citizens—some of them spoke in favor of trying for a five/four system—as I remember it.

And I don't remember much else that went on.

Q I believe you testified earlier that one or more citizens testified in opposition to any plan crossing the river.

A [119] I think so.

Q How many citizens testified in that respect?

A I don't remember.

Q Was it more than 10?

A I don't think so.

Q Was it more than five?

A I don't remember.

Q Do you remember the names of any witnesses who testified against a plan crossing the river?

A At that meeting?

Q Yes.

A No.

Q Do you remember the names of any citizens who spoke to you during that week—between March 27th



and April 2nd of this year—and expressed their opposition to a plan crossing the river?

A No, I don't.

* * *

[120] BY MR. PARKER:

Q Mayor Bliley, I show you what has been marked for identification as Defendant's Exhibit 12—for Defendant Crusaders Intervenor No. 12—[handing exhibit to the witness]—and ask you what that map represents.

A [121] [Looking at exhibit.] Well, it is a map of the City of Richmond.

It has two districts and, I assume, part of a third.

It says it is the 1971 State Senatorial Districts 9 and 10—which is the two Senators for Richmond—and No. 11—which we share with Chesterfield.

Q Now, it is true, is it not, that No. 9 encompasses the eastern half of the City of Richmond—going both north and south of the river—and 10, the western half, with the exception that a small portion of the southwestern part south of the river is encompassed in No. 11?

A That is right.

* * *

Q [130] Mayor Bliley, how long have you lived in the City of Richmond?

A I have lived in the City of Richmond—continuously within the city except for time out in the service from 1932 until 1959, all in a house in Henrico County—a quarter of a mile from the city line. And I lived in that house and continued to work in the city until 1966.

Since 1966 I have lived in the city continuously.

Q And how old are you, sir?

A I am 41.

Q [131] So, with the exception of college and the service, you have lived in or within a quarter of a mile of the City of Richmond for 41 years?

A That is correct.

Q Now, I asked—this is slightly repetitive, and I apologize to His Honor—but I would like to back up once again to:

Where is the Maggie Walker High School?

A The Maggie Walker High School is at Lombardy and Leigh Street.

Q And that is in what part of the city?

A That is in the central-west end north of the river.

Q And where is the Armstrong High School?

A The Armstrong High School is on the Nine Mile Road in the east end.

Q Almost on the city line bordering the County of Henrico. Is that right?

A It is pretty close.

A And both of those high schools were black high schools until the schools were desegregated. Is that not correct?

A Yes, sir.

Q Could you tell me the names of the other high schools in the City of Richmond prior to desegregation?

A [132] John Marshall.

Q Where is that high school?

A Now it is located on Old Brook Lane. At that time it was located at 9th and Marshall.

Q And what part of the city is that?



A 9th and Marshall is right downtown, in the business district.

And Thomas Jefferson, which is located on Augusta Avenue in the west end.

I don't know when George Wythe opened. But it was sometime in the 1960s.

Q And that is located south of the river?

A That is located south of the river.

Q And when, if ever, did the City of Richmond begin to provide transportation to school-children.

A It provided it when the Judge ordered it. And that was in—this is for all of the children. I think there were some "special education"—or something like that—provided before that.

But, basically, it did not provide transportation until—I don't know whether it was 1971 or—

Q The fall of last year, was it not?

A It might have been.

It was fairly recently. I know that.

Q [133] The pairing of the schools under the Court Order had been in effect for a year prior to the Court-ordered transportation. Isn't that true?

A I know that we had the Court-ordered bussing in August or—when the schools opened in 1970.

Q The "pairing" or the "bussing"?

You say the "bussing" was last fall?

A Well, the "pairing," I guess, would be the proper—

Q The pairing was prior to the bussing. Is that not correct?

A Prior to the city having to purchase buses, I think so.

THE COURT: Could you get to your point a little bit faster, Mr. Parker?

BY MR. PARKER:

Q I think I asked this–but Armstrong, being almost in Henrico County, is, of course, north of the river?

A Yes. It is north of the river.

MR. PARKER: One moment, Your Honor. [Conferring with co-counsel.]

Thank you, Your Honor.

BY MR. PARKER:

Q This morning, Mayor Bliley, you testified that the river is–I believe you used the phrase–"a natural boundary."

A [134] Yes, sir.

Q What do you mean by that?

A I mean that there is a distinct community of interest south of the river as well as north of the river.

Q What do–

A The two are not the same.

Q When you say "a distinct community of interest," what do you mean?

A I mean that the people's concerns are different on north of the river and south of the river. Those south of the river have one concern as far as the services they feel they need and require from the city as opposed to those north of the river.

Q Do I understand you correctly, then, that all of the people south of the river have one set of interests and all of the people north of the river have an entirely different set of interests?

A Well, some interests, I am sure–on some of the issues their interests would be the same. But they do have distinct interests–and oftentimes conflicting.



Q "Oftentimes."

"Usually "?

"Oftentimes" is–

A [135] When certain issues come up, yes, they are diametrically opposed.

Q And are there not also issues in which people in one part north of the river would be diametrically opposed to people in another part north of the river?

A Possibly, yes.

Q And is that not also true south of the river?

A I haven't come across it. But I suppose it could be.

* * *

BY MR. PARKER:

Q Mayor Bliley, just before the recess you spoke of the fact that there are distinct differences between the people north of the river and the people south of the river. I believe you used the phrase "community of interests."

A [136] They have some different interests, yes.

Q And has the City Council ever discussed the concept of "community of interest"?

A It may have come up in a discussion of various matters before the Council. We are involved with it when we take up certain matters that we know are based on a community of interests in a particular community involved with the particular matter that is before the Council.

Q Well, there you are speculating that you know what the views of the people are.

What I am asking is, specifically with regard to the ward system:

Did the Council ever discuss the concept of "community of interest"?

A No.

Q Did the Council ever discuss the concept of "neighborhood"?

A No.

Q Did the Council ever give any instructions to anyone with regard to drawing a plan with regard to "community of interest"?

A I can't speak for the other members of the Council. But the Council, itself, as a whole never did. And as a member of the Council I never gave any instructions on that to anybody.

Q [137] What do you, in your own mind, define the phrase "community of interest" to mean?

A Well, "community of interest" as I have used it—there are certain neighborhoods—historical neighborhoods, sections of the city—that have formed citizens associations and expressed to me that they have a community of interests. And those people act together in that regard.

Q You are saying that the people within one neighborhood have a "community of interest." Is that it?

A Yes. Generally speaking, they have a common interest.

Q And how would you define a "neighborhood"?

A A "neighborhood" is a group of residents—be they single-family or multi-family areas of the city—where people live in a geographic location within a political subdivision, such as the city.

Q You mentioned civic associations.

How do they relate to "neighborhood" and "community of interests"?



A Usually the civic association represents a neighborhood. Or it may be several neighborhoods together—usually contiguous to one another.

And the civic association meets, and they discuss certain things. And they take a position, which position is usually referred to—which involves something with regard to [138] the city—or something that is up for consideration by the City Council—which view is expressed usually by the officers of the civic association to the members of the Council, collectively or individually or both.

Q Now, then, I understand from your answer that one neighborhood would be represented by one civic association—or one neighborhood would have one civic association and another neighborhood would have another civic association.

Is that true?

A Usually, yes.

Q Could there be one neighborhood that will be represented by two civic associations?

A I suppose it could be. I can't recall any offhand from memory. But I suppose it can happen.

Q But as far as you can recollect at this time, each civic association would represent one or more different neighborhoods?

A That is right.

It is usually in such neighborhoods that are contiguous to one another.

Q But you can't think of any examples where the civic associations overlap each other?

A I don't know of—I can't recall any offhand.

But that does not say that none exist.

Q [139] And, so, each association would represent a distinct community of interest?

A Possibly.

Q And there are what—some 50 or 60 civic associations—within the City of Richmond?

A Could be.

I don't have any exact count.

Q Could you give me the approximate count? Does "50" or "60" sound right?

A I don't know. I never totaled them up.

Q Does that number sound extremely high?

A As I said—

THE COURT: He said he doesn't know. He can't do any better than that.

THE WITNESS: I don't know.

MR. PARKER: Okay.

BY MR. PARKER:

Q Now, I take it from your earlier testimony that you don't think a Councilman should represent people who have different communities of interests.

Is that true?

A I said that I didn't think a Councilman should represent people on both sides of the river. That is true.

Q [140] But, other than that, you have no problem with a Councilman representing people with different communities of interests?

A I have no problem with a plan for the city that doesn't involve wards crossing the river. To me that seems a major factor.

I realize that you have to have lines—you have to have numbers of people—and sometimes you are going to split a neighborhood no matter how hard you might try not to do that.



But I think the river is a major factor. Of all the neighborhood boundaries, that is certainly the largest factor.

Q Are you familiar with a neighborhood known as Oregon Hill?

A Yes, sir.

Q Is Oregon Hill a neighborhood?

A It was. But it has been pretty hard hit by the town expressway and also by the expansion of businesses in the Commonwealth of Virginia University.

So, it is still there. But its size has been diminished considerably from what it once was.

Q What is the character of Oregon Hill—what is left of it?

A Residential.

Q [141] What sort of "residential"? I don't know what you mean by just "residential."

A Single-family, for the most part.

Q Do neighborhoods—you mentioned the differences between neighborhoods.

Would neighborhoods differ as far as economic status is concerned?

A As far as the average income being, yes.

Q You wouldn't be likely to find a lot of people with, say, a $5,000.00 annual-mean income in the same neighborhood as people with a $50,000.00 annual-mean income?

A Generally speaking, you don't.

Q And, similarly, with a couple of exceptions, you don't tend to find people who might be referred to as "ethnics" in the same neighborhood as people who—for lack of a better term—would be "First Family of Virginia Wasps"?

A I don't know.

It could be that there are instances where they do live in the same neighborhood.

Q Then, the term "ethnic" would not play a part in defining the character of a neighborhood?

A It doesn't in Richmond–not "ethnics."

Q How about "race"?

A [142] There are certain neighborhoods that, because of housing patterns generally speaking, are residents of one race or another.

Q So, then, you would say that neighborhoods differ geographically–that is, as far as "boundaries" or "barriers" such as the river or the turnpike are concerned. Would that be a fair statement?

A That would be a natural boundary, I would think.

Q Like a par, would that be a "natural boundary"?

A Could be.

Q So, they differ because of natural boundaries and they differ because of economics. Is that true?

A They differ because of location; the neighborhoods do. The people who live within the different neighborhoods differ because of one neighborhood as opposed to another because of economics.

But–

Q And a poor neighborhood would have a different community of interests from a rich neighborhood. Is that not correct?

A Generally speaking, I would say, yes.

Q And neighborhoods vary and have different communities of interests because of race. Is that true?

A I don't know that that necessarily would be true.

[143] Economics might play a greater factor than race.



Q Okay.

And, now, what is the economic status of the people who live in Oregon Hill?

A I would say that they would probably be below-average income.

Q Significantly below?

A I don't know, Mr. Parker.

I have never seen any figures on what the incomes of the residents are that live in Oregon Hill. So I couldn't–

I would say, judging from my knowledge of the neighborhoods in the city, that the annual income of the persons living there would probably be below the average income of the citizens of the city.

Q Would you say it is significantly below–

A But, beyond that, I can't expand on this.

Q You never spoke to the Oregon Hill civic association?

A Yes. I have spoken to them–on more than one occasion, not only once–since I have been the Mayor.

Q Before you became the Mayor did you speak to them?

A No.

Q From speaking to them, did you get some feeling of what their interests would be?

A [144] Yes. I got what they were interested in at that time.

Q Are you familiar with a neighborhood known as Westover Hills?

A Yes, sir.

I formerly lived in it.

Q Could you describe Westover Hills for us?

A Single-family residential area, which is located on the south side of the river.

It is generally bounded on the east by Cedar Lane, on the west by the A.C.L. Railroad, on the north by the river, and on the south by Forest Hill Avenue.

Q And what is the economic status of the people who live in Westover Hills?

A I would say that it is above-average.

Q Significantly above-average?

A I don't know.

I have never seen figures on what the income is.

Q What is the racial concentration in Westover Hills?

A White.

Q How about Oregon Hill?

A Oregon Hill is mostly white.

Q Are you familiar with a neighborhood known as Westhampton?

A 145] Yes, sir.

I live there now.

Q Can you explain the characteristics of Westhampton for us?

A Westhampson has pretty much the same characteristics as far as income would apply to Westover Hills.

Q "Above-average"?

A Above-average.

Q You don't know whether it would be significantly above or fairly close to "average"—or whatever it is?

A I don't have the exact figures. But there are sections within Westhampton that would be probably significantly above-average. There are other sections of Westhampton that would be below-average.



Q So, it is not all above-average in that neighborhood?

A True. But I would say it is pretty much above-average.

It is a much larger area than Westover Hills.

Q And are you familiar with a neighborhood known as Windsor Farms?

A Yes, sir.

Q Could you explain the characteristics of the people who live in Windsor Farms?

A Upper income.

Q [146] Significantly above-average?

A Generally speaking, I would say, yes, they are "above-average" if they live in Windsor Farms.

Q And is that an almost exclusively white neighborhood?

A Yes. I believe they are white, all of them—as far as I know.

Q And would the people who live in Windsor Farms have any community of interest with the people who live in Oregon Hill?

A I would say that they would have a different community of interest.

Q How about the people who live in Westover Hills and the people who live in Church Hill?

A I would think that they would have a definite difference in their community of interests, because the people in Westover Hills live on one side of the river and the people in Church Hill live on the other side.

In addition, there is the economic-interest factor.

Q What I have forgotten to ask you is:

What is Church Hill?

A Church Hill is a section of the City of Richmond on the east end.

Q What are the characteristics of the people there?

A [147] I would say that they are below-average in income.

Q How about racially?

A Racially they are predominantly black.

Q Getting back to Westhampton, what about the race of the people in Westhampton?

A Predominantly white.

Q You testified that the people in Westhampton would be above-average—but not greatly above-average—income, whereas the people in Windsor Farms would be significantly above-average—or considerably above—

A Right.

Q Would there be a community of interests among the people in Westhampton and Windsor Farms?

A Yes.

They border each other. Both are located in the west end. Both are served by the same primary traffic-ways. They would have more of the same bus-lines—and what have you.

They would have more of a community of interests, yes.

Q Are you familiar with the neighborhood known as Maymond?

THE COURT: I didn't hear the name.

MR. RHYNE: "Maymont."

THE WITNESS: Yes, roughly.

[148] BY MR. PARKER:

Q Describe that neighborhood for us, please.

A It would be bounded by Byrd Park to the west,



by the James River to the south, by Idlewood Avenue to the north, and by Randolph Street to the east. That would be about the boundary lines.

Q And would you characterize the persons who live there for us?

A I would say that they would be close to average in income—maybe a little above.

Q How about race?

A The race is predominantly black.

Q And would they have any community of interests with the people in Windsor Farms?

A They would have some, but not too much—because you have the park as a natural boundary and beyond the park you have an expressway and railroad to cut them off. So, there is not much interplay in between.

Q Are you familiar with a neighborhood known as Carillon?

A Yes, sir.

Q Could you describe the characteristics of the people who live in Carillon?

THE COURT: I didn't hear the name.

MR. RHYNE: "Carillon."

[149] BY MR. PARKER:

Q What would be the average income in this area?

A It would be above-average income.

Q And would the people in Carillon have a community of interests with the people in Maymont?

A Yes, they would have.

They would have a similar community of interests because both are vitally concerned as to what happens to that park.

There have been discussions about converting the park into a science museum and, also, about expanding the park to the James River—where they are going to put the park, the places, and things of that nature. Both neighborhoods are very much concerned about that.

Q What about Carillon and Windsor Farms? Do they have a common community of interests?

A Carillon and Windsor Farms would not have very much of one because of the railroad as a natural boundary. Some, I am sure they have—but not as much as Carillon and Maymont.

Q How about Carillon and Oregon Hill.

A Carillon and Oregon Hill, I would say they would have little of a community of interests between the two.

Q Would Carillon have more of a community of interests, say, with Westhampton or Windsor Farms?

A [150] I would say they would probably have more of a community of interests with Oregon Hill, since they are in the same—they go back and forth through Oregon Hill to and from the downtown section.

In order to get to Carillon the most direct route from downtown is through Oregon Hill. At least you have to go through there pretty close to it—if not actually through it. You could go around Oregon Hill to get to Carillon, but the shortest way would be to go through it or just past it.

Also, the people in Carillon are vitally interested in what happens along the river—from the Lee Bridge all the way west on the north side of the river. And Oregon Hill is, of course, a part of this.



There is not a great deal of a community of interests, admittedly—but possibly so.

Q Well, isn't Carillon adjacent to Windsor Farms?

A Carillon is adjacent to Windsor Farms. But it is separated from them by a railroad, which is a considerably fixed boundary.

Also, there is a metropolitan expressway in between, which is six lanes wide.

Also, the people in Windsor Farms shop to the west. And they send their children to private schools in the west end. And their recreation, for the most part, is also located to the west.

Q [151] That freeway goes all the way up through the city—or will when it is completed?

A It is not a "freeway."

Q Excuse me.

A toll-way goes all the way up the city?

A That toll-way will go from pretty—well, through the city from about 17th Street on the east to the belt-line. And then it branches and goes south across the river and north to connect with 95 and 64, the interstates.

Q And, so, it forms a "T," sort of, at the western part of Richmond?

A Yes, sir.

Q You testified that it forms a rather major barrier between Carillon and Windsor Farms.

You also testified that Carillon and Oregon Hill would have a greater community of interests than would Carillon and Windsor Farms.

Is that not right?

A I would think this is probably so. But a good case could be made for the other way around.

I think they have more of a community of interests with Oregon Hill—not necessarily a great deal, though. But they probably have.

Q [152] As a matter of fact, aren't Oregon Hill and Carillon separated by Byrd Park, the 24th Precinct, and the Randolph area?

A And two cemeteries.

Q So—

A Three cemeteries.

Q So, there is a significant separation between them. Isn't that true?

A There is a separation.

But in order to get to Carillon I would go, generally speaking, through Oregon Hill by traversing west on Idlewood Avenue, which is just past Oregon Hill. And this, of course, tends to create an additional community of interests.

Q You would say that if you go through one community to get to another, the one you go through and the one you get to would have a community of interests—even though the two are widely separated?

A As far as the road is concerned—which may or may not be a big factor. But they do have a community of interests involving it.

Q They would have a community of interests as far as that road is concerned?

A And they could have, among other things, a community of interests because of that.

Q [153] Do Carillon and Oregon Hill have a community of interest with any of the neighborhoods in the city—say, Windsor Forest?

A Windsor Forest, which is a future development along the banks of the James River on the south side, is



of vital concern to the Carillon area. And what happens in that area would also be of interest to Oregon Hill, which also bounds on the river. That would be of concern to both those communities, yes, sir.

Q Doesn't Windsor Farms also bound on the river for a considerably longer distance and isn't it closer to Carillon than Oregon Hill?

A Windsor Farms does bound on the river. But it is separated—that portion of the city on the river is separated from Carillon by Rothesay.

Q "Rotsi"?

A By Rothesay, which is a cul-de-sac—a separate neighborhood.

Q It is separated by that area from—

A And by what used to be a quarry.

And also by the A.C.L. Railroad.

And, of course, Carillon is already very highly developed by single-family dwellings. And it is one of the [154] strongest civic associations in the city and is well financed. And it would strongly oppose any multi-unit development.

But other civic associations east of Carillon are not as well financed and, perhaps, may not be as able to resist multiple-family development along the river.

Therefore, the people in—

Q Would the people on the south side of the river near the area being developed and the people on the north side just across the area being developed have any community of interests as to who would be next to the development?

A I would say there would be little or none—because you are talking about a distance of a half-mile

to as much in some cases of a mile. And that is a pretty long ways.

Q What about the people at opposite ends of a bridge?

You have stated earlier that the people in different areas have a community of interest in a common road.

What about the people at opposite ends of a bridge across the James River? Would they have a community of interest in that bridge?

A Yes. They have a common interest in the bridge.

But a lot of times it is conflicting interests.

Q Returning to the river factor:

Aside from the bridge, would the people on the south side of the river have a community of interest with the people [155] on the north side of the river as far as pollution of the James River is concerned?

A Yes.

Q What was your answer?

A Yes, they would.

Q And they would have more of a community of interest with regard to pollution of the James River than the people on either side would have with people, say, at the far-northerly end of the City of Richmond?

A No.

I think all the people in the City of Richmond are concerned about pollution in the river, because there is a public park that traverses most of that river and they all want to use it. It is open to all citizens. And I think that all of the citizens are concerned about pollution in the river.

I get many letters with regard to pollution. They come from all sections of the city.

* * *



[158] BY MR. PARKER:

Q And you mentioned that a turnpike—a toll-way—would present a major barrier to the people in different neighborhoods and would separate their communities of interests. Is that true?

A Yes, sir.

Q And that would be equally true with respect to all the neighborhoods in Richmond?

A Yes, sir.

Q And would that also be true of the segment of I-64 which is within the City of Richmond?

A Yes, sir.

Q And that would also be true with regard to various parks, would it not?

A Yes, sir. Depending on the size.

Q [159] And it would also be true with regard to railroad tracks?

A Yes, sir.

* * *

Q [172] Mayor Bliley, you have been on the City Council for how many years now?

A Five-plus.

Q And your constituency is on both the north and south side of the river, isn't it, sir?

A [173] I am elected from the city-at-large.

Q As a matter of fact, the contituency of every member on the Council since 1971 has been both north and south of the river, has it not?

A That is right.

Q And they have represented these people without any conflicts of interest, haven't they?

A I believe that is true.

Q You don't believe you have been involved in a conflict of interest, do you?

A No, I don't.

There may have been some times when I wished I wasn't the Mayor. But I have always strived to make the best decisions for all of the people.

Q But you have been able as the mayor to serve both sides of the river. Isn't that a fact?

A Yes.

Q Thank you, sir.

Now, calling your attention to what you call the "natural boundaries" of the City of Richmond when you were on cross-examination by Mr. Parker, you spent a lot of time dealing with the R.M.A., which is a toll-road, and the expressway, the turnpike 95–which you termed as "formidable barriers"–that is correct, is it not, sir?–

A [174] Yes.

MR. VENABLE: Now, Your Honor, I will speak a little louder. But I wanted to approach this map–[standing at easel and pointing to exhibit]–the ward plan which is Exhibit No. 15.

BY MR. VENABLE:

Q [Pointing to exhibit.] This is a modified ward plan, is it not–modified from what came back from the Justice Department?

A Yes.

Q Now, is it not true that the turnpike 95 splits right down the middle of Ward F and right down the middle of Ward B?

A It splits it.

I don't know–you know, it might be a little bit off the exact middle.



Q Do you want to take one of those maps you have there, sir, and tell us if that is so?

A These are school maps. But I guess I could pick it up on this. [Looking through documents.] I don't have the ward plans here. And it is rather hard to tell from these.

But I would say that it splits it. Yes, it does.

Q It splits it right down the middle, doesn't it?

And the Richmond Metropolitan Authority toll-road [175] splits Ward D in this plan–[pointing]–right smack down through the middle, does it not, coming north up Poor White Creek?

A Yes, sir.

Q When it crosses over the north side of the river it is more or less the boundary between Wards A and E, is it not sir?

A Yes, sir.

Q And then a portion of it–a spur of it–turns to the right–to the east, that is–and comes downtown, doesn't it?

A Yes, sir.

Q Down to what is known as the "Idlewood Corridor," thereby splitting the top part of Ward E right off the ward?

A Yes, sir.

Q And it does the same thing coming into Ward F?

A Yes–except in Ward F, most of it goes through the business area and in Ward H–there are not many people that live north of 95 in Ward H, if any–or between 95 and the river.

Q We haven't talked about H yet.

But talking now about Ward H, at the point where

95 crosses the river in Ward H there is a floodplain in the river there, isn't there?

A [176] There is a floodplain there, yes.

Q And that is where the Sanitation Department and everybody else deposits various kinds of refuse?

A [Indicating affirmative response.]

Q I am now talking about Ward F. [Pointing.]

That ward is bifurcated into three areas—east, west, and north—isn't it?

A Right.

However, most of the people live south of the expressway.

Q Which expressway? 64?

A 95.

Q "95"?

A 95.

Q And 95 runs north-and-south, doesn't it, sir?

A It winkles around in there; it doesn't run true north-and-south.

Q And can you define "Barton Heights" for me?

What is the northern-most boundary of Barton Heights?

A I am not certain whether Barton Heights stops at Buckley Boulevard or not.

Q Don't Ward C and Ward F split Barton Heights?

A No.

[177] Ward C and Ward F—[looking at document]—

Yes, it does.

Q And Ward F and Ward G split Church Hill?

A With most of it lying in F.

Q And Ward H and Ward D, as they approach their northern boundaries, split right smack down the middle of Westover Hills. Is that correct?



A No.

Most of Westover Hills would be to the north and east—to the "west," I mean—of Ward D.

That is Forest Hill that is in H over there—for the most part.

There is some of Westover Hills in H. But it is a relatively small portion.

* * *

Q [183] Now, your personal feeling is that you don't like ward plans at all. Isn't that true, Mayor?

A My personal feeling is that I don't.

At one time I thought that perhaps—maybe—it wouldn't be so bad. But the more I have studied it—and I have had an ample opportunity to do so—the more I feel that at-large elections are better.

Q So, your answer is that you do not like ward plans?

A [184] No.

Q "No"? You do like ward plans?

A No. I don't like ward plans.

Q As a matter of fact, you have gone on record, Mr. Mayor, haven't you, of saying that if and when the City of Richmond and the State of Virginia are able to get out from under the Voting Rights Act you would be in favor of having a referendum in the City of Richmond on whether or not to keep the ward-plan system that was ordered by the Court?

A That is right.

I think the people should be given a chance to decide.

But I also want to say that I am not certain which way they would decide.

Q And, of course, according to the census there were 47,000 white people in the annexed portion of the city in 1970. Is that not correct?

A Right.

Q Your referendums are held at-large in the City of Richmond, aren't they?

A Yes, sir.

Q The newspaper accounts by Mr. James Davis, who is a reporter for the RICHMOND TIMES-DISPATCH, concerning the [185] attitude we have just spoken of—on your feelings as to the referendum and the ward plan—are accurate, are they not, sir?

A Yes, sir.

MR. VENABLE: Your Honor, as a part of the record in this case there is an affidavit filed in June, in which two clippings—the clippings I have just referred to—are attached.

And I move to introduce them as Defendant Intervenor Holt, et al., Exhibit No. 1.

* * *

[188] BY MR. VENABLE:

Q Was the black vote of the City of Richmond diluted by the addition of 47,000 people from Chesterfield County, predominantly all of whom are white—except for 555 or, by your figures, "15-hundred"?

You have admitted that before, haven't you, Mr. Mayor?

A I don't remember.

I know that we added a territory to the city that had people in it and, therefore—most of them were white—so that there are now more whites living in the



City of Richmond than there were before the annexation.

Q Are you prepared to say that there is no dilution caused by the annexation of 1970, Mr. Mayor?

A No.

Q Was the dilution caused by the annexation?

A I would say that the effect of the annexation did produce dilution.

Q Thank you, sir.

* * *

Q [203] Mr. Mayor, in 1971 when the original lawsuit—Holt 1—was filed and the Justice Department objected— [204] since then have you or any other member of the government of the City of Richmond thrown on any brakes whatsoever on what you spend and what bonds you issue on what capital improvements you have placed in the annexed area in anticipation that at any time you may not have proper title to that area and it might be taken away from you?

A No, Mr. Venable—because we are, also, under a five-year order as far as the annexation is concerned to make certain improvements in that area within the time specified.

* * *

**B. Testimony of Dallas H. Oslin, Jr.**

[212] BY MR. RHYNE:

Q Will you state your name and your home address, please?

A Yes, sir.

My full name is Dallas H. Oslin, Jr.

I reside at 4801 Atwood Road, Sandston, Virginia.

THE COURT: That is "Dallas"?

THE WITNESS: That is right.

THE COURT: How do you spell the last name?

THE WITNESS: "Oslin." O-S-L-I-N.

THE COURT: Thank you.

BY MR. RHYNE:

Q Mr. Oslin, how long have you been employed by the City of Richmond?

A 18 years, sir.

Q And during those 18 years, what has been the nature of your employment?

A The nature of my employment, basically, for the past 12 years is that I have been involved in this annexation suit—with criteria mainly in economics, demography, and cartography.

Q Do you look upon yourself as—in what professional area?

A I am a Senior Planner in the Planning Office.

* * *

Q [215] Now, you referred to Exhibit No. 15 as the "revised plan."

[216] Why did you use those terms?

A I prepared and submitted to the City Attorney, Mr. Mattox—who submitted to the Council—Plan D, which was taken to the Justice Department and submitted to them.

The Justice Department recommended certain changes.

The "Revised Map D," although the ward plan of April 25th, reflects those revisions as suggested.

Q So, Exhibit No. 15 is really Exhibit 14 as revised to incorporate the Department of Justice's suggestions?

A Yes, sir.

Q Now, Mr. Oslin, you stated in general some of the criteria that you used in drawing these ward plans.



Q [213] Now, you referred to this litigation involving the City of Richmond –

A Yes, sir.

Q – in your previous answer.

In that connection – let me withdraw that, and I will start again.

In connection with litigation involving the City of Richmond, have you been asked to draw ward plans for the election of the City Council?

A That I have, sir.

Q I am going to hand you, Mr. Oslin, Exhibits 12 through 15. [Handing exhibits to the witness.]

A Yes, sir.

Q And I am going to ask you to identify – in a few words – each one of those exhibits, starting with Exhibit No. 12.

A Exhibit No. 12 is a ward plan which I prepared – commonly known as Plan C – prepared in October of 1971.

Exhibit No. 13 – commonly known as Plan B – is a nine-ward study, which was prepared also during the month of October of 1971.

Plaintiff's Exhibit No. 14 is also a nine-ward plan – commonly referred to as Plan D, which was prepared in March of 1973.

[214] Plaintiff's Exhibit No. 15 – commonly known as a ward map dated April the 25th, 1973 – was prepared and adopted by the City Council, I think, in the next month.

Q And all of these maps were prepared by you?

A Yes, sir.

Q Now I hand you what has been marked as Plaintiff's Exhibit No. 18. [Handing exhibit to the witness.]

And I will ask you to identify it.

A Plaintiff's Exhibit No. 18 is a revised "demographic characteristics" of the ward map of the City of Richmond dated April 25th, 1973.

This is a document which I prepared.

Q And it as to which of the ward plans that you have previously identified?

A It is a document which I prepared.

Q And it applies to which of the ward plans you have previously identified?

A It applies to the plan commonly referred to as a "Ward Map - City of Richmond / April 25th, 1973" – which is more commonly referred to as the "Revised 'D' Plan."

Q Exhibit 15?

A Yes, sir.

Q Now, in preparing these ward plans, did you use certain census information?



A [215] That I did.

Q I am going to hand you Plaintiff's Exhibits 1, 2, and 3. [Handing exhibits to the witness.]

And I will ask you to identify those.

A Yes, sir.

Plaintiff's Exhibit No. 1 is census-tract information for Richmond, Virginia, and the county compromising the Standard Metropolitan Statistical Area.

Plaintiff's Exhibit No. 2 are black statistics of the Richmond, Virginia, urbanized area.

Plaintiff's Exhibit No. 3 are the 1970 census tracts for the City of Richmond with the population there only shown.

Q Now, Mr. Oslin, in drawing these ward plans, could you state the criteria that you used?

A Yes, sir.

The criteria – the first criterion that was utmost in my mind was the criterion of "equal components" – and nine wards – one-ninth of the city divided geographically – commonly referred to as "one-man/one-vote," that situation.

Criterion No. 2 and thereafter were "compactness," "community of interests," "contiguity," and "likeness of area and responsibility," and "interest in the community."

* * *

Did you take into consideration "race" in any way?

A No, sir.

In drafting up the ward plans I was interested in distribution of the total people—and not in their composition. So "race" never entered into the selection of the areas of the wards.

Thereafter, after the wards were drawn, an analysis was made for the Council as to what the composition of the wards were. But that was a second phase of it—not the phase of the actual drafting of the wards.

* * *

[217] Are all of your facts with respect to "race" based upon these census exhibits that you have identified?

A Yes, sir, it is.

Q Now, do these census exhibits show the racial breakdown for the voters in the new city, including the annexed area?

A No, sir.

In no place that I know of in the census are voters broken down by race or anything.

The census does have age coord's in it. But it does not having anything as to the voter's race.

Q For example, then, do they show the voting population by race before and after the annexation in Richmond?

A No, sir.

They show the voting age—but not the voters, themselves.

In other words, you could either take "21" or "18"; and as a voting age you could tell how many

people there were by "race." But you could not tell whether they were voting or not.

Q Have you–well, taking the people of voting age in the population of Richmond before and after, have you ever computed these by "race"?

A Yes, sir, I have.

Q Could you state what your computations show?

A [218] Yes, sir.

The composition of the City of Richmond in 1970–18 years and above–and the city as it is presently constituted consists of 37.3 percent black above 18 and–

MR. VENABLE: Your Honor, I would like to interpose an objection.

I want to know how this testimony relates to the method and criteria of drawing the ward plans proposed by the City of Richmond and taken to the Department of Justice–which was outside the scope of the testimony outlined by counsel as to Mr. Oslin.

Had I known he was going into this approach about "over the age of 18" and et cetera and that that was the purpose for which these exhibits were being presented, I would have gone into further discovery and had a witness to counter the obvious implication he is trying to put forth by this witness.

And I respectfully submit that he knew full well prior to coming in here today–and I am quoting him–"... will testify regarding the method and criteria for drawing the ward plans prepared by the city of Richmond for the United States Department of Justice"–and he should so be limited, because I will have no witness with which to counter the bald implications of what they are trying to put on now.

* * *



[219] THE COURT: I will overrule the objection.

MR. RHYNE: Go ahead, Mr. Oslin.

THE WITNESS: Would you like me to start back over most of my answer?

MR. RHYNE: Yes.

THE WITNESS: All right.

The total city, which is the area that is outlined in black over there on the map, in 1970 when the census was taken was:

37.3-percent black, 18 years of age and above.

It was 62.7-percent non-black.

And "non-black" includes both white and/or yellow and Indian.

MR. DERFNER: I am sorry to interrupt you. But I think I missed part of the question.

Is this as to the whole city?

MR. RHYNE: The total city.

THE WITNESS: The total city, which is the area outlined in black.

MR. DERFNER: Including the annexed area?

THE WITNESS: Yes, with the annexed area.

[220] MR. RHYNE: I will ask him about the other.

Go ahead.

THE WITNESS: All right.

Within the 1942 city limits–which is commonly referred to as the "old city"–it was:

44.8-percent black and 55.2-percent non-black.

BY MR. RHYNE:

Q Now, Mr. Oslin, with respect to the drawing–

THE COURT: Just a moment.

What time-frame is that related to?

THE WITNESS: That time-frame, sir, is "1970."

THE COURT: And this is before the annexation?

THE WITNESS: The last figure I gave you, Your Honor–"44.8" and "55.2"–was the 1970 figure, but of the city previous–the area of the city previous to the annexation.

THE COURT: All right. Thank you.

MR. VENABLE: Your Honor, I am going to have a continuing objection to testimony that has no relevancy to the criteria used by this individual to draw a plan.

THE COURT: Over ruled.

MR. VENABLE: All right, sir.

BY MR. RHYNE:

Q Mr. Oslin, I would like for you to describe to the Court the method that you used in dividing the City of Richmond into nine wards.

* * *

Q [234] Mr. Oslin, when were you first requested to draw any plans dividing up the City of Richmond into wards?

* * *

[235] THE WITNESS: Sir, I can not tell you the exact date. I can tell you it was in the month of March. Not "March." It was within the month of May of 1971.

I do not keep a calendar to go back to with reference to particular assignments.

I was called into the Manager's office and–

BY MR. DERFNER:

Q That would be Mr. Kiepper?

A Mr. Alan Kiepper at that time.

–and requested to make a study.

And this is the reason why the plans were called



"ward studies." It was not a conclusive thing at that time.

Why he was playing with the idea–toying with it–as an administrator at that time, I do not know.

But I was requested to do a division into nine wards, a division into six wards with three elected at-large, and a division into five wards with four elected at-large.

They were completed and, you know, returned to him. And that was the end of my immediate assignment at that particular time.

Q Did he give you any other–did he give you any specific instructions about how to draw these plans?

A [236] Unfortunately, he did not. I had to do some of my own research in order to come up with where I had to go.

He was an administrator. And I think, me being a demographer, he kind of felt that I could dig up my own stuff.

Q And your research, I take it, was what led you to use the factors–the criteria you have listed here–that is, "equal population," first, followed by "compactness," "community of interests," "continguity," and "likeness of area" and "interest in the community."

A Yes, sir, it was.

Q Did you get any instructions from anyone else at about that time?

A The only instructions I can say I had at the time, I did–I advised my supervisor that I would be doing it. But he did not give me any instructions as far as how to do it, other than just to proceed with the task.

Q And your supervisor was Mr. Talcott?

A Yes, sir, it was.

I think that you have to realize that you have to keep your supervisor advised when you are doing a project for someone that is going on.

Q How long did it take you to draw these plans, roughly?

A I would say, in the neighborhood of the three plans, probably within three-to-five days—at the most, the maximum.

Q [237] Did you have any help in doing that?

A No, sir, I did not.

I am a—somewhat of a loner.

Q In other words, there was nobody in your office who could either draw any of those lines or check any of your arithmetic—or anything of that sort—

A No, sir, there isn't.

Q —at that particular time?

A Not at that particular time.

I did have a draftsman who worked for me on the finished drawings when these plans were prepared for distribution.

As you realize, in the filing of the exhibits the first time all the plans were known as "ward studies." And at a later date they became known as "Plans A, B, C, and D."

At that particular time he did assist in putting those plans into such a fashion that they were presentable.

Q About when was that?

A That was previous to "2-D."

At that particular time I—

Q Would it be sometime in 1973?



A Yes, sir, it was.

These things have laid dormant between '71 and '73—for a very good while.

Q [238] In other words, the plans that we have here, which you have described as being the plans you devised in the spring of '71, are in a sense copies. We don't have here the actual maps that you put your pen to paper on, do we?

A No, sir, we do not.

These are—the correct title of these are "diazo reproductions." They are reproduced from a tracing on a machine.

Q And would you tell me just about how much of a finished product did you give Mr. Keipper in that three-to-five days, or so? In other words—

A In that three-to-five days it was basically just a magic-marker line on a map.

But the arithmetic part of it was finished. But the rapid presentation was just arithmetic—just a magic-marker type.

Q When you say the "arithmetic part was finished," you mean the totals shown on these maps?

A Right.

Q The totals you already had at that time?

A Right.

They were the totals that I had arithmetically added up and divided and had just used—you know—the common, old magic-marker and marked up the map and carried it back to him.

[239] At a subsequent—

Q Had you—

I am sorry.

A At a subsequent date we did go in and make sepias of them, so we could make reproductions for distribution to the members of the City Council.

Q Now, were the lines on the map that you gave Mr. Kiepper at that time exactly like the lines today? Or did you find that you missed a street at one point or needed a correction anywhere?

A Without going way back, I would have to say that no changes have been made, to the best of my knowledge.

I made the maps, myself. And I think that in a majority of instances a handwriting expert will find that the lettering on them is mine.

Q And have you modified any of the arithmetic figures since that time on the basis of revised census figures?

A Let's go back to a concept here.

The first plans that were done were done back in 1971, at which–at that particular time the best census information that was available was the blocked group of a numeration of district information.

At subsequent levels we used refinements as they came out of Washington here.

[240] Exhibit 18, I believe–Plaintiff's Exhibit 18–the ward map, is called "revised demographic characteristics of the"–

Q Did you–

A –"of the wards."

* * *

Yes, sir. It is revised, because I did find out that I made an error. And I tried to find it.

BY MR. DERFNER:



Q You mean, Exhibit 18 is a revision?

A Right.

Q But what about the actual numbers on these exhibits–12, 13–are they the '71 numbers? Or are they '73 revised census numbers?

A To the best of my knowledge, they are '71 numbers.

Q All right.

Now, you drew three plans and gave three plans to Mr. Kiepper in the spring of '71.

A That is right.

Q And then, I gather, later in '71 you drew some more plans.

Is that correct?

A [241] [Pausing.]

Q About October, let's say.

A Yes, sir. About October of '71.

Q At that time you drew another five-ward plan?

A Yes, sir.

Q And you drew two additional nine-ward plans?

A That is right. That I did.

He requested some different ones to consider.

Q You drew these plans on Mr. Kiepper's request that he would like some more?

A Yes, sir, I did.

Q Did he say how he would like for these to be different from the first three?

A No, sir, he did not.

Q Did he give you any new instructions this time?

A No, sir, he did not–other than to give some variety.

Q Did anybody else give you any instructions between the first and second plans?

A No, sir, they did not.

Q So, that by the end of 1971—or the latter part of the fall of 1971—you had, if I understand correctly, two five-ward plans, a six-ward plan, and three nine-ward plans.

A Yes, sir, I think so.

Q [242] And if I am not mistaken, the three nine-ward plans are the same ward plans that are now called Plans A, B, and C.

A Yes, sir, they are.

Q When did you put—I am sorry. When did you do the compilations of the racial breakdowns in those plans?

And if you did the work for different plans at different times, you can say that, too.

A Well, Mr. Kiepper's request at the time that I was instructed was, first, to do the "one-ninth" or "one-sixth"—or whatever it was.

And then he wanted—after that he requested an ethnic breakdown of each of the wards.

Q When did you do that?

A As the information was carried back to him—to report back, you know—

Q Excuse me.

A As I say, you know, it went back to him in a magic-marker form.

Q We are talking now about March or so of—I am sorry—May—

A I am talking about May of 1971.

Q So, in other words, he did tell you—he did give you an additional instruction after he got those plans, in which he said, "I would like to see what the racial numbers are."?



A [243] Right.

Q And then, I presume, you supplied those numbers fairly quickly.

A My notes, as they were found in the deposition, included the census tracts—and all. And I aggregated that into each ward.

So, it was no problem to go back and put in the ethnic composition in each of those census tracts and come up with—

Q When you say "ethnic composition" you mean "race," don't you?

A I mean "race."

Q So, when you started to draw the October plans that he had requested by way of additional variety, you understood that what he wanted then was not only plans on the total population, but racial breakdowns?

A I was aware that when I finished the division into the number of election districts that I would then do the racial breakdown after that, also, to have a continuity in what he had requested.

Q Did he ask you for anything more?

A To my knowledge, no.

Q Did anyone else ask you for anything more?

I am talking now about, say, up to the end of 1971—in other words, during the period of time in which you had drawn these sets of plans and even a little bit later.

A [244] When you say "anything more," sir, you will have to remember that at the particular time this was going on—and I think Mr. Marsh brought it to your understanding—this really brings it to my mind—I was contacted by some members of the City Council.

Mr. Marsh, as an example, came up and got some demographic data from me.

Maps were—we prepared a map which showed—

Q When you say "Mr. Marsh," do you mean counsel for the Crusaders?

A I mean the Vice Mayor of the City of Richmond.

THE COURT: What do you mean by "demographic data"?

THE WITNESS: Sir, "demographic data" is considered population data which would show the total population.

At that particular time it showed "blacks" and it showed "white" composition.

It was made available to any of the Council members who wanted it—and to practically any of the public who wanted it.

* * *

Q [246] What did you understand Mr. Kiepper to mean when he asked for some more variety?

A Mr. Kiepper was a person who liked to see two or three things to choose from. And this is what he got.

This was basically my understanding of what he wanted.

If you look at the three plans, there are differences.

And for this reason I gave him three that were different. There were different degrees of difference in them—if you can understand that.

Q And the differences would be in areas such as where you started?

A You can choose a course of action in doing a ward plan that will—by saying that this particular thing,



that I want to hold to this as a line—will have a pyramiding effect on the geographic shape of a ward.

The first ward plan, I have to admit I was really inexperienced in actually doing it.

So, he wanted more variety, so I chose some different ways of doing it.

You can see in the ward plan there—[pointing]—that "C" has an elongation.

Q [247] So, you chose different shapes, different ways of drawing the lines.

Did you choose, for example, some different boundary lines—some different barriers to use?

A. Yes, sir.

The first plan I was not as happy with as I would like.

The second two plans, basically, on the north side of the river are the same. And on the south side of the river I was basically trying to split up the annexed area so that the annexed area would have a feeling of being in with the old city.

If you look at the plans, I think, you will find that that is basically the philosophy that is there.

Q What information did you have—or what—I am sorry. What information did you have and from what source that enabled you to—or that you used in trying to decide what was the "neighborhood" or what was the "community of interests"?

A [Pausing.]

Q Or, as you say, a "likeness of area"?

A Historically—I have done this commercially. I am a private cartographer.

Two of the road maps that are used by the oil companies, I do the locations of the names of the geographical areas on them.

* * *

[249] THE CLERK: Defendant Intervenor's Exhibits 17 through 21 marked for identification.

[Intervenor Crusaders' Exhibits Nos. 17 through 21 were marked for identification.]

MR. DERFNER: These are maps which have been–which each counsel has and which have been listed on our list as being labeled "Richmond Maps 1, 2, 3, 4, and 5."

And they are five ward plans that we have submitted at various times on behalf of the Crusaders.

MR. RHYNE: I suppose we have them. But could you give us the numbers, so we can dig them out?

[250] MR. DERFNER: They are Crusaders' Exhibits N, O, P, Q, and R.

MR. VENABLE: Are you introducing them only for the purpose of marking them?

MR. DERFNER: They have been marked.

I am going to find out if Mr. Oslin can identify them.

THE COURT: What are they marked as here?

MR. DERFNER: They are marked here as Defendant's 17, 18, 19, 20, and 21.

MR. RHYNE: Do you want to ask him to identify your exhibits?

MR. DERFNER: I want to know if he can.

[Handing exhibits to the witness.]

THE WITNESS: Thank you, sir.

If I identify them, sir, it may not be by your



specific exhibits. It may be just purely by geographically saying–

BY MR. DERFNER:

Q Well, first–

A –because I haven't seen them before.

Q Pardon me?

A I say, I may not know them by your "Defendant's Exhibits." But it would be by the geographic content here they are commonly referred to as.

[251] MR. RHYNE: The question is:

Have you ever seen these before?

THE WITNESS: Yes, sir, I have.

BY MR. DERFNER:

Q Have you seen–

A I have seen copies like these. But I can't say I have seen these particular ones.

Q Have you seen copies of each of those, as far as you know?

A To the best of my knowledge, I have.

THE COURT: Do you want to open them up and take a look?

THE WITNESS: [Complying with the Court's request.]

Yes, sir. I have seen them.

BY MR. DERFNER:

Q And are you able to–have you satisfied yourself–or are you able to tell from those maps that those are in fact maps of Richmond?

A Yes, sir. They are maps of Richmond.

Q And that they are, each of them, divided into nine segments?

A Yes, sir.

Q And have you also seen the sheets attached to each one that have arithmetic figures on them.

A [252] Yes, sir, I have.

THE COURT: Prior to today?

THE WITNESS: Yes, sir, I have.

BY MR. DERFNER:

Q Have you done any calculations or checking of calculations on those figures?

A Yes, sir, I have.

I have done analytical work on them.

Q Have you done–and have you satisfied yourself that those figures are what they seem to be–in other words, that where it says a "total population" or Ward B on a certain map is "27,000"–whatever it is–that that is in fact what the population is as far as your knowledge of the census records is?

A I can not say from right here. I could take these with me tonight and check them against my calculations. But I can't make it from just a cursory examination.

Q Well, what calculations have you made?

A I have been back over them. And I had miscomings because an earlier exhibit–I do not see it here–in which you footnoted that there was an error in my Ward H.

You had found that error, so I had been back over your calculations to try to find out what that error was. And I think I satisfied myself to make those changes so that I was satisfied.

[253] I do have totals–my own totals–for this.

Your Exhibits Q and R–your footnote at that particular time was that arithmetically they did not add up–the black and the white.



I have been through them and satisfied myself with the figures that will add up to the distribution as it should be to "249,431."

Q In other words, if I understand what you are saying, you have checked the figures that we have claimed are shown on those maps and you have satisfied yourself, I take it, that they are correct with a couple of minor exceptions that you have just mentioned–

A Correct.

* * *

Q [267] Mr. Oslin, I believe you testified early yesterday that the Census Bureau divides the City into a number of segments?

A Yes, sir.

Q How do you mean that?

A Well, I don't have the book before me.

[268] Statistically, a City the size of Richmond, and any large City, is divided into tracts, census tracts.

I don't know if it's characteristic of other cities or not, but it's characteristic of Richmond, that certain census tracts have been aggregated into quadrants of the City.

Show you what I mean here with Plaintiff's Exhibit 3.

MR. DERFNER: Plaintiff's Exhibit 3 is the map showing Census Tracts?

THE WITNESS: Yes, sir; it is.

MR. DERFNER: Very well.

THE WITNESS: By the numbers–it used to be in north, east, south, and west, they have aggregated the different sections or quadrants of the City.

The 200 series here, used to be called the east section of the City; but with the advent of computerization and all, they had to get rid of the alphabetical things. So, it's all numerical.

This 200 is east; this 100 is north; this 300 is central; this 400 is near west end; and 500 is far west end; the 600 series is the southside; and the 700 series is the annexed area.

[269]BY MR. DERFNER:

Q Is there a series labeled the 1,001 series?

A The 1,001 series and the 700 series are identical, but due to the lateness of the Final Decree of the Supreme Court on the Annexation cases, the Census had to go with the County designation.

Cities were to use a three digit classification of census tract. Counties were to use a six digit classification.

We could not, working with the Census Department, guarantee to them that it was going to be City, in time for them to use a three digit–

Q So, in other words, the 700 series is represented on some of these maps by 1,001–

A 1,003 or something of that type.

There are correlations between it. We have had numerous correspondence on the initial drafting of this.

We have attempted to use what they said was going to be used, and they ended up using County designations.

JUDGE MARGOLIS: What do the numbers stand for?

THE WITNESS: The numbers are just a geographic identifier for the census tract.



[270] The census tract started back in Richmond in the early '30's and it was to be a homogeneous area in which it would enumerate the population as a small geographic area.

So that, a City the size of Richmond, or anyplace in the country now that is very large, that you would have statistical units.

You have to realize that government is not the only user of census data; churches, private people, commerce and everything. So, they are always aggregating data.

Commerce would be studying a trade area of a particular commercial venture, so they would aggregate these.

The application of one particular individual may not be the same as the others but they were to be around 4,000 persons in criteria and that would be somewhat homogeneous.

JUDGE MARGOLIS: What is the difference between a 300 and a 400, for example?

THE WITNESS: In the 300, you have 301, 302 as census tracts. I think from 301 to 306.

The 200 series is just a different section of [271] town.

As I said, the 300 series covers the central portions of Richmond, and runs from 301 to 306.

The eastern portion of Richmond, quadrant wise, is the 200 series and runs from 201, and if memory serves me, to 212.

There are 12 census tracts in the 200 series and 6 census tracts in the 300 series.

It's just a further breakdown to allow demographers and all, chances of comparison of circuits.

JUDGE MARGOLIS: All right.

Thank you.

BY MR. DERFNER:

Q This was basically your starting point, as I understand it?

A No, sir; not basically my starting point.

This was how I looked at the City in its beginning.

In other words, you just don't jump in head first, you've got to do some looking. And, I had arrogation quadrant wise, as well as individually, for the City.

So when I looked at Church Hill and saw I had 24,000 people, I knew what I had to do. I had to bisect [272] that.

Q What I'm trying to get at is when you say you saw the census tract divisions and divided the City quadrant wise, are you saying that by looking at these 7 divisions, that you saw what might—not necessarily be a starting point, but a way of conceiving the City is broken down into several parts?

A Yes, sir.

This was done much before my time, and so I looked at that and an aggregated population and could see that the rationale of it was behind what had been done much previous, to my way of thinking.

Q I see.

So, you were guided in a sense by what you say is the logical rationale of this division that had already been made?

A To a certain extent, I was.

Q Now, you spoke of trying to keep similar neighborhoods together, I take it?

A Yes, sir; I did.



Q How did you go about defining what was a neighborhood?

A Well, let's go back to my rapport with [273] Your Honor here a minute ago, the census tract, and the initial conception of it was to be neighborhood, so that was the beginning of it.

There has been changes over the years, so I was aware of some of those changes. I'm not an expert in sociology but I do—worked with it enough that I have somewhat a feel for it. So that, I was able to use my background for census data in help define a neighborhood.

A neighborhood is a very containable definition. It's a sense of the people who live there.

My definition of a neighborhood may not coincide exactly with another person's definition of a neighborhood.

Q You said it's a sense of the people who live there, you mean that to a certain extent it's subjective, depending on what the people in the neighborhoods, themselves, think about who are their neighbors?

A I would say yes.

Q And, what information, in trying to decide where these subjective boundaries tend to fall?

A One of the biggest things that you can use when you use this, is the perimeter streets.

Very seldom, is a neighborhood bisected by a [274] major street, though it will have some type of barrier. It could be industrial; it could be a park; it could be a major artery; but it usually flows and has a way of operating.

In other words, it will probably have a school in it. It will probably have small commercial activity in it

in which those people funnel to as a convenience.

Q How big could a neighborhood be?

A I would say a neighborhood could vary from probably two or three hundred homes, probably up to a thousand homes; no problem.

Once you get above that, you get into the community standard, which then becomes a collection of neighborhoods.

Q So, a neighborhood, if I can translate your number of homes into people, two or three hundred homes, I take it, would be in the neighborhood of anywhere from six to eight hundred people; and a thousand homes would be in the neighborhood of perhaps 2,000, 3,000 people?

A Right.

Q So that a neighborhood might include—would ordinarily include, I think you're saying, something in the neighborhood of one to three thousand people?

A [275] Right, I would say.

Q So there would be about how many neighborhoods in Richmond?

A I would not venture to guess how many definite neighborhoods that there would be in the City.

Q It could be a hundred or more?

A It could be a hundred.

Q Now, in defining neighborhoods, the basic factor you've given me is the perimeter streets.

A Right.

Q Now, are there any other factors that you used?

A As I said, not only perimeter streets, but land uses, such as industrial buffers which will tend to define it, that will enclose that particular area. There could be a park on one side.



Q I see.

In other words, I didn't mean to limit the answer to perimeter of streets, but basically what might be called perimeter are physical boundaries, whether it's a street or a dead-end or a valley or a railroad track?

A It could be the lack of any of those items.

In other words, if you could not get into the area but from one way and it ended in a cul-de-sac type [276] of operation, that would a definitive boundary which would focus people into one, just like in chemistry with the bubble lesson. There's no way to get out but one way.

So, it defines that way.

Q So, you would assume that the people in a given area bounded by certain physical boundaries would consider themselves to be in a neighborhood?

A I would personally consider that. Living in a neighborhood, myself, there's a feeling of that, and I would tend to believe that feeling would be expressed in other neighborhoods as a plan.

Q Now, did you make any survey as to the interest of the people in certain neighborhoods?

A Personally, I did not.

Q Do you know—would you say that you know a great deal, a fair amount about the interests of people in a specific neighborhood in Richmond?

A Towards what, sir?

Q Well, what issues they are concerned with?

What their attitudes are on certain things?

A No, sir; I have not made an attitudinal survey or behavioral survey at all.

Q [277] Are you familiar with any civic associations in Richmond?

A Yes, sir; I am.

I have all of them mapped in my office.

Q Pardon me?

A I have all of them mapped in my office.

Q The civic association boundaries?

A Yes, sir; as the civic associations, individually, have given us that information.

Q About how many are there?

A As far as I can remember it's in the neighborhood of 40 or 50, I think. I'm just trying to recollect how long the list was. I do not have that before me.

Q But, it would be consistent with—I'm sorry, you say 40 or 50?

A That is to the best of my knowledge. I would not like to go any more definitive than that.

Q Are you familiar with the attitudes of the people in any specific association; the particular attitudes of the people in a particular association?

A Only in two in which has come to my attention as part of the drafting of wards.

Q So that basically, what you know about the civic [278] associations is the territory they cover?

A The geographical coverage that they have enumerated to us.

* * *

Q [282] You don't live in Richmond, do you?

A No, sir. I do not.

Q You live in Henrico County?

A That, I do.

* * *

Q [287] So that, inevitably there's no way to draw a ward, let alone 9 wards, that has everybody with similar attitudes, similar interests?



A No, sir.

The City is heterogeneous and is not homogeneous in its entirety. So that, any ward that I know of on a map is a heterogeneous ward, in that it has a mixture of interests in it.

Q And, if you move the line in a given direction, you might increase the similarity at one point, but you might also have to give up some similarity at a different point, is that correct?

A No, sir. It is, and this is the reason that the particular person who is doing it, has to make [288] judgments as to what—there are instances in which you can not include all neighborhoods into a ward, and you have to split some.

And, here I think the question of a localized person doing it, who does have some knowledge, and I don't say I have all the knowledge; but has some knowledge of the City, is in a fairly good position to make that judgment.

Possibly, it would have been better if we had had a Ward Commission, as we've done in some localities that had inputs from more than one person making the decision.

I don't know whether that was good or bad; but it fell upon me to make those decisions and I made the decisions based upon the best of my knowledge.

Q Without getting help, basically, from anyone, I take it? You say you were a loner yesterday.

A I was alone in this, other than there was some feedback.

You'll have to remember, at this particular time that all of this was transpiring, we were in the midst of

the redistricting of the City of Richmond in the General Assembly, the reapportionment of that.

[289] We–and, I say "we", I assisted some of the members of the General Assembly in doing some drafting.

And, when certain maps hit the paper on that redistricting, there was some heavy feedback from people who knew that I had done that redrafting.

I think a grand example was with Wood Haven Heights, I believe that's the name of it, South Richmond; and the Fan District.

The reapportionment of the General Assembly's Plan, I split those. And, those people came to me personally and raised cain.

But, there are times in which you do have to violate your own conscience. You just try to keep those to a minimum, for your own personal satisfaction.

Q Now, if I understand you correctly, plans were drawn for the General Assembly, would have been a State House Plan or a State Senate Plan?

A State House Plan.

Q And, that would have been–that would have divided Richmond into 5 pieces?

A Yes, sir; it would.

Q Did those plans you drew, have any resemblance to the two 5 Ward Plans that have been introduced here?

A [290] I could not say, right now–before me, that they did or didn't. I think one of them was generally referred to as the one that would be used, and then, of course, the 5 Ward Plan, as I was working with



it at the time, went out the window when they decided to have the General Assembly encompass the whole City.

Q In other words, there were two different plans?

A To the best of my knowledge there were.

Q In other words, when you talk about your conscience and you talk about your own personal satisfaction, I take it what you're saying, is that the thing you really don't want to do is to split up a neighborhood?

A I would not want to split up a neighborhood, personally; but I come back to my question of a one man, one vote, which I feel is heavy restraint with the legal ramifications of presenting the deviation.

Q Well, luckily I take it, the–because neighborhoods are likely to be fairly small and much smaller than the size of the wards you have to draw, there shouldn't be too many instances where you do have to cut a neighborhood?

A There's not a great deal.

Q I think you gave us some examples. You said [291] that you had cut the Fan District at one time?

A In one of the plans I had at that time, and these people were quite anxious to express themselves, especially when the President is in your own office.

Q And, you then, in drawing the later plans, I take it, made some attempt to bring the Fan District closer together?

A I'm more recognized, at least I can tell you that.

Q And, you said there was another district in South Richmond called Wood–

A It's Wood, something or other. It is east of Forest Hills Park, and north of Semmes Avenue is the area.

In one of the earlier plans, I did split that.

The President of the civic association, personally came to me after he had found out that I was the guilty culprit. And, at the office he told me that they were one distinct neighborhood.

Q And, you could take a look on your map of civic associations and see that, by George, you had drawn a line through–

A At that particular time, I did not have a map of the civic associations. This was in the A,B,C, realm.

[292] We had later, at that particular time, hired a social planner who had as one of her assignments, was to build a mechanism for working with citizen participation; and that was her first chore, was to map all of the civic associations.

Q When did she do that?

A That has been, I would say, since '72.

I couldn't give you a definite date on it.

* * *

Q [300] Have you drawn any plans since Plan D?

A Nothing except the revision, as suggested by [301] the Justice Department, in one ward map of the City of Richmond, April 25th.

Q And you were basically instructed how to draw that map?

A I was instructed through Mr. Mattox who voiced the criteria that the Justice Department said they would like changed.

There were particular things that they looked for and, of course, in a Ward map when you change it, it has a domino effect. You can't do it in a vacuum.

If you move a thousand people from one place, you've got to take a thousand from another.



So, then I made those changes, and turned them over to Mr. Mattox, who evidently seeked the approval of the Justice Department.

* * *

[306] FURTHER CROSS EXAMINATION

BY MR. VENABLE:

Q I believe I remember your prior testimony yesterday clearly in which you testified that in drawing these ward plans, racial considerations were not part of your criteria and that you did not identify, or know the racial considerations of the wards until after you completed your rough draft. It that correct, sir?

A In numerical numbers.

Q In numerical numbers, that's what I'm talking about.

JUDGE MARGOLIS: Is this with respect to both plans?

[307] THE WITNESS: That's with respect to all plans, sir.

BY MR. VENABLE:

Q Well, we'll just stick to–well, all plans will be fine.

A All right.

Q And the Ward Plans, themselves, are based on population, total population aren't they?

A Yes, sir; they are.

Q And it's total population that you're concerned under one man, one vote; is it not?

A With the division of 9 equal wards.

Q Yes, sir.

JUDGE MARGOLIS: I didn't hear that.

THE WITNESS: With the division of the City into 9 equal wards, you're working with total population.

BY MR. VENABLE:

Q So, if race was no part of your initial considerations, and if wards were based, that you drew, on total population, you didn't actually break it down into black and white over the age of 18 did you when you drew these ward plans?

It took no part in your consideration in forming [308] the lines? Now, isn't that a true statement?

A Yes, sir; I would say it is.

Q Your Honor, I would move to strike the earlier testimony to which I made objection based on percentages of black and white in the old and new City by over the age of 18 having nothing to do with the scope of his testimony.

Strike it entirely from the record.

By his own testimony, he took no part, whatsoever in the consideration of the development of these Ward Plans.

* * *

Q [318] Now Mr. Oslin, calling your attention to Exhibit 15, which is the revised modified–

A Yes, sir.

Q Can you follow this?

A Yes, sir. I can see it from here.

Q Petersburg Turnpike bisects Ward B, Ward F; does it not, sir?

A Yes, sir; it does.

Q The Richmond Metropolitan Authority Powhite Expressway bisects D, comes up between A and E, bisects a portion of A and a portion of B; does it not, sir?

A No, sir; it does not.

Q It does not bisect A?



A No, sir; it does not.

Q It does not come up the railroad track, alongside Hamilton Street and North Thompson?

A No, sir; it does not.

Q The spur from the Richmond Metropolitan Associate Authority which connects with 64, now am I being accurate enough?

A No, sir; you are not.

It's I- 95, sir.

Q [319] I-95?

A Yes, sir.

Q All right.

It comes up then to–

A Carcy Street.

Q Carey Street.

And then, an automobile traveling on that road would continue north would it not?

A Yes, sir; it would.

Q Now we're on what? What's the road?

A Interstate I-95.

Q Fine.

And that goes and bisects A and part of B in connecting up with 95 - 64?

A Yes; it does.

Q Thank you.

Now, the R&A then proceeds from the area of Byrd Park, bisecting E and a portion of F; does it not?

A No, sir; it does not.

Q It is projected to bypass and projected to bisect E and F; does it not?

A It is projected.

Q Thank you, sir.

[320] As a matter of fact, land has been cleared through these two areas to form a corridor, has it not?

A Yes, sir; it has.

Q The line between D and A bisects Westover Hills, too; doesn't it sir?

A The line between D and A?

Q Coming off the Nickel Bridge?

A Part of it does, sir.

Q And, Barton Heights is bisected by G and F; does it not?

A That is a hard neighborhood to say what is bisected in that area.

Q Are you familiar with Barton Heights?

A Yes, sir. I am.

Q Church Hill is bisected by F and G; is it not?

A Yes, sir. I testified to that.

Q And the line– the northern line between E and B runs down Floyd Avenue; does it not–a major portion of it?

A A major portion, yes sir.

Q Floyd Avenue is part of the Fan District isn't it?

A Southern terminus.

Q The southern terminus?

A [321] Yes, sir.

Q But, you've excluded off the southern half of Floyd Avenue with your district line? haven't you?

A Yes, sir.

Q If you had come down the alley would you have excluded any of the Fan?

A A better definitive would probably come down the alley, but there's way to aggregate data that way.

Q Thank you, sir.



Now, when Mayor Bliley approached you about doing Ward Plan D, what instructions did he give you?

That's in February and March?

A Well, he never approached me about Ward Plan D.

Q Did you have a conversation with Mayor Bliley about Ward Plan D?

A I – D, that's the one that I wanted to do.

I went to Mr. Mattox on that.

Q You went to Mr. Mattox?

A Yes, sir.

Mr. Mattox went to the Mayor, not me in particular.

Q So, you never had a conversation with Mr. Bliley about Ward Plan D prior to drawing it?

A I may have had, but my direct inquiry was through [322] the City Attorney.

It's conceivable that I did have some suggestions. I don't remember a direct request.

Q Thank you, Mr. Oslin.

### C. Testimony of A. Howe Todd

[347] BY MR. VENABLE:

Q Have you ever been asked to study the Ward Plans as of October 3rd – October 2nd, 1973; the ward plans presented in this case?

A No, sir.

Q You were not familiar with them at that time, were you, sir?

A Not in detail.

Q You had made no detailed study of them, had you sir?

A No sir.

Q So, your testimony at that time was that you knew nothing about them other than what you had read in the paper; is that not correct?

A That is correct.

Q You so testified to those same questions in my office, under oath; did you not?

A Yes, sir.

Q As to that part, Your Honor, Mr. Todd, on discovery deposition, having been listed as a witness of the City since the first days of September, 1973 pursuant to your own order, listed as being called to testify upon the characteristics of the City of Richmond, on which we [348] then had discovery in this Court, for the purpose of deciding what his testimony would be; could not qualify in any respect, personal or expert to testify about the Ward Plan that he is now being called upon to testify.

And, to me, it is a blatant and apparent attempt to frustrate the principles of trial procedure and, particularly, the principles of discovery, which is not the first time this has occurred in this case. to now put this man on and attempt to qualify him as to their Plans.

When we had discovery of this man and attempted to find his feelings about their plan, in which he was not qualified to testify by his own opinions.

And, I just think it would be a travesty of justice to allow the Plaintiffs to now go forward with this man, unqualified, purposely kept unqualified as they try to offer him today at the time of the discovery, to frustrate discovery.



And, I just don't think it's a procedure which ought to be sanctioned by this Court.

And further, on just a technical basis, he has not qualified as a political expert and I will now ask, with the Court's permission; Mr. Todd, you are not qualified [349] to comment on voting patterns in the City of Richmond, are you, sir?

THE WITNESS: I think I am.

BY MR. VENABLE:

Q Are you familiar with the voting patterns of the City of Richmond?

A You mean the precinct voting patterns?

I'm not sure of that term.

JUDGE MARGOLIS: I'm not sure what you mean by voting patterns.

BY MR. VENABLE:

Q All right.

I'll change my question, sir.

Any comments he may have on voting patterns may not be of any degree of expertise, would it?

JUDGE MARGOLIS: I still don't see –

MR. VENABLE: Whatever definition he wants for voting paterns, Your Honor.

JUDGE MARGOLIS: What is voting patterns?

THE WITNESS: I don't know.

I have difficulty with that term.

BY MR. VENABLE:

Q You did not question that term, when asked in [350] my office on October 2nd, did you Mr. Todd.

A I don't remember.

Q Then I will quote page 40.

"Having gone to that point, Mr. Todd, are you

familiar with the voting patterns of the City of Richmond?"

Answer: "No, sir."

Question: "So, any comments you have on voting patterns would not be to any degree of expertise at all?"

Answer: "Not today."

Question: "Not today?"

Answer: "Now you've asked it, I might look it up, but at the moment I really don't know anything about the voting patterns."

A I don't understand the term.

Q You didn't question me about the term at that time did you Mr. Todd?

A I didn't understand it was my purpose to question you.

Q You understand it's your purpose to question today though, don't you Mr. Todd?

A No.

Q How many times –

JUDGE MARGOLIS: Mr. Venable, let's not argue [351] with the witness.

MR. VENABLE: I don't consider it arguing, Your Honor, but I will concede to the Court's wishes.

BY MR. VENABLE:

Q Mr Todd and I have been through this case 3½ years. We have talked about voting patterns in discovery. We have talked about voting patterns –

MR. RHYNE: He's testifying, Your Honor and I think it's gone about as far as it ought to go.

JUDGE MARGOLIS: I think at this moment, just confine your questions to Mr. Todd and leave the argument.



BY MR. VENABLE:

Q Have you ever qualified as a political expert, Mr. Todd?

MR. RHYNE: What do you mean by political expert?

I think this is –

MR. VENABLE: Then, I will rephrase it.

BY MR. VENABLE:

Q Have you ever had any courses of study which would lead to a degree of expertise in voting patterns, voting elections, election laws, the way people vote, any way you want to interpret voting Mr. Todd, are you [352] either educated or qualified by practice and experience to testify as an expert in politics and voting in the City of Richmond?

A As applies to this case, I think so; yes.

I would explain it this way, Your Honor; my expertise is planning, and I believe planning without legislative action is absolutely dead and legislative action without planning is futile.

And, I think that as we proceed to work in subareas of a community to develop plans that is a real relationship between those smaller districts and the kind of legislative relationship that ought to be built in order to allow the Council to follow through with actions to carry out such plans.

So, therefore, in planning, I see a State relationship to legislative action.

Q Have you ever studied politics, other than as a general survey subject, Mr. Todd?

A No, sir.

Q Have you ever been politically active in any political party in the City of Richmond since 1947?

A No, sir.

Q Are you qualified to testify on any given [353] precinct, what the ratio of the vote by party or by race or by any other sub-catagory that you might devise would be at any given year?

MR. RHYNE: Your Honor, I object to this.

I haven't asked him about politics. I have merely asked him to apply this community of interest criteria of his to the various wards. I don't see what the political process has to do with the expertise of this witness.

JUDGE MARGOLIS: I'll overrule your objection, Mr. Rhyne.

BY MR. VENABLE:

Q So, your answer is no, Mr. Todd?

A Yes, my answer is no.

Q As a matter of fact, at no given time can you break down into political subdivisions by party, or any other subdivision which you wish to classify by precinct, as applied to cencus tracts on this map or any other map for voting –

Your Honor, I would ask that if Counsel wish to confer that they don't do it with one Counsel standing to my left and another Counsel yelling to him across the table.

[354] MR. RHYNE: Well, I can't sit down in my chair because Vice-Chairman of the City Council Marsh is sitting –

MR. MARSH: You certainly can, sir.

I'll move my chair around.

JUDGE MARGOLIS: I think we're all set now.

MR. VENABLE: Would you please read the last question back, please?



(Whereupon, the reporter read back from the record.)

BY MR. VENABLE:

Q Now Mr. Todd, it's also true that you do not know by precinct or any other subdivision in the City of Richmond, the particular issues in each and every election which effect the voting patterns and the way those people vote in all the areas of the City of Richmond, do you?

You've never made that study?

In the 1970 elections, for instance, if I were just to randomly point to an area on that map, you could not, with definitive expertise, tell me what the issues were most important in those peoples minds in that particular election and how the vote reflected those concerned, could you?

[355] MR. RHYNE: Your Honor, I object to these questions as having nothing to do with what this witness is to testify about.

JUDGE MARGOLIS: I'll overrule it.

THE WITNESS: No, sir. I don't think I could say in the 1970 elections what the citizens felt to be a big issue.

BY MR. VENABLE:

Q Once again, Mr. Todd, as of October 2nd, 1973, when you came to my office for discovery deposition in this case, had you been informed that you would be expected to testify about plans, ward plans prepared by the City of Washington, D.C. where you are today in this trial?

A I had been informed that I was to be a part of the trial.

JUDGE MARGOLIS: What?

I can't –

THE WITNESS: That I was to participate in a trial, yes, sir..

BY MR. VENABLE:

Q But, no one at that time, had intimated to you that you would be testifying about the Ward Plans, did they?

A [356] Well, the trial was about the Ward Plans, I thought, so I assumed that I would be testifying about the Ward Plans. I thought that's what the trial was about.

Q Question, page 6, "Has anyone intimated that you would be testifying about these Ward Plans in Washington?"

Answer: "No, sir."

Does that refresh your memory?

A I can't say that I didn't say that. I assumed that I was to be in a trial.

You asked me if I remember whether I had studied the plans –

Q Would you like to see your testimony in this case, in my office on October 2nd, surrounding those questions, Mr. Todd and see if it refreshes your memory?

A It might help.

Q May I approach the witness, Your Honor?

JUDGE MARGOLIS: Yes.

(Counsel hands the document to the witness.)

MR. VENABLE: Perhaps you should read them into the record, Mr. Todd, starting at the bottom of the page where we began that line of questioning.

A You first asked me whether I had drawn the plans, and –



[357] MR. RHYNE: What page are you reading from, Mr. Todd?

THE WITNESS: I'm reading from page 5.

His question as to whether I had participated directly or indirectly in the drawing of them, and I said no.

Have you been asked to study the Ward Plans, and I said no.

So, you're not familiar with them at all, and I indicated that I had seen them in the paper and I had seen them but I had not studied them.

Have you been informed that you'd be expected to testify about these plans in Washington, and I said that I hadn't been told precisely that I'll be testifying in Washington.

Q I'm asking him to read from that record, and I believe he's paraphrasing and adding.

A No. I'm reading exactly.

"I haven't been told precisely what I will be discussing in Washington."

Q All right, sir.

A And "Has anyone intimated that you will be testifying about these Ward Plans in Washington? And, I [358] said, "No, sir."

Q Thank you.

Read the next question, pelase, following the answer "no, sir".

A "So, then, your testimony is you don't know anything about them other than what you have read in the paper?"

Q And, your answer, sir?

A My answer was, "At that moment, I had not made a study, at that time."

I've had an opportunity since then to do so.

Q And, you have discussed your testimony pursuant to that subsequent study with Counsel for the City in this case, have you not?

A I have met with the attorney's over the past weekend, as I recall and the week before.

Q Your Honor, I think that says it. I make my argument now, on my voir dire.

I'm sure the Crusade voir dire will go into other areas and other arguments.

My first and foremost argument is this, Your Honor, that there has been a consistent pattern by the Plaintiff City of Richmond to introduce testimony in this case, [359] either by way of exhibit, late filing of papers on the day we meet, by way of questions beyond the stated scope of the testimony of witnesses to introduce evidence that we would not have had the opportunity to discover, or having had the opportunity to call witnesses to rebut.

That this is just another, and even more blatant case, of the City of Richmond coming to deposition with the witness that they knew was going to testify in a particular area, not discussing it with that witness in that area, nor telling him to prepare for it so at the time of deposition we would be prevented and precluded from going into any definitive detail in that area, and then later at trial, attempting to go into an area which we have not had an opportunity to discover, with an individual that had not been previously listed as a witness for that area, nor is an expert for that area; which to me, is absolutely unconscionable and should not be allowed by this Court in any respect to come into testimony.



Further, in my objection, I think we have shown conclusively that Mr. Todd has never studied politics; has never taken any special training in politics or political questions; is not able to look at the City of [360] Richmond and in any way break down voting patterns in any way he wants to define it, on issues or etcetera, on any given subdivision in the City of Richmond, not even able to point to an area and say what issues are important to those people and how their vote reflected it; and such, absolutely can not qualify as an expert in question in political considerations or plans.

He not only does not qualify on voir dire, but himself, on page 40 and again on page 49, made it clear that he was not qualified to comment on voting patterns and was not an expert, had no expertise in that fashion.

And so, for our prime objection being the first, and our secondary objection being the second, we strenously object ot this line of questioning.

And, if the Court would turn to the list of witnesses presented by the Plaintiff City, in the areas in which they were going to call to testify, it would search in vain, even with this updated last minute list of witnesses, which was presented on the October date that we originally petitioned that we were going to be in the trial the last time, when we were last here before the Court.

[361] It will find that even in that list of witnesses and testimony, which we did not exceed to, and think it's highly improper; it still – you would have to search in vane for any suggestion that this man was going to go into this kind of testimony or they

were going to attempt to use him to get this kind of evidence into the Court.

And, we strenously object to it.

* * *

Q [505] If your aim was to cure the problem created by those 47,000 people, as they're effective in voting; that's all we're talking about is voting, then the purest cure is to get rid of people that caused the problem in the first place.

Correct?

A No, sir.

Q [506] I call your attention to the day you spent in my office.

MR. RHYNE: Let him explain his answer. He wanted to –

JUDGE MARGOLIS: Is there something else you wanted to say?

THE WITNESS: I can explain my "no, sir".

I think he's going to say that I said something different at the deposition.

JUDGE MARGOLIS: Well, let's not anticipate what he's going to say.

You just answer the questions.

BY MR. VENABLE:

Q I call attention to your testimony of October 2nd, 1973 in my office, page 90, in which I asked you exactly the same question, word for word as I've just phrased it.

Answer: "But there are other factors."

Question: "I'm talking about voting only."

Answer: "Voting only, maybe so; I really hated to admit that."



Do you remember making that statement?

MR. RHYNE: What page are you on?

[507] MR. VENABLE: Page 90.

MR. RHYNE: Well, just ahead of that is what I'm concerned about.

MR. VENABLE: Your Honor, before he reads it and educates his witness, I'd like to have him answer the question.

MR. RHYNE: No, no. Now, wait a minute.

Your Honor, this is an unfair question, because just ahead of that, "But there are other factors..".

You see, –

MR. VENABLE: I read that, Your Honor.

I read the whole thing.

"But there are other factors."

Question: "But I'm talking about voting only."

Answer: "Voting only, maybe so, I really hated to admit that."

* * *

Q [508] I'm sure you would, except I'm not asking you for your explanation.

JUDGE MARGOLIS: I'd like to hear it.

MR. VENABLE: And, I'm sure the Court would.

THE WITNESS: Well, I didn't realize this and I feel that there's a great fear of what I might have done or learned, or trained myself since the deposition; and the one thing that I have learned, Your Honor, frankly relates to this question, and this is all that I've learned since the deposition; and that is that the voting age population did not have a majority of people –

MR. VENABLE: Your Honor, I object.

There's not been laid a sound basis and founda-

tion. It's not responsive to my question and you must lay a foundation for that.

He's talking about statistics that does not have any basis, and certainly can not be related as a responsive answer to my question.

MR. RHYNE: He's explaining his change in his answer to your question. He has a right to do that.

JUDGE MARGOLIS: I'll permit the answer.

THE WITNESS: I thought the whole issue was on the question of how much voting potential, existing [509] prior to annexation, and the fact that the annexation was supposed to have illusions of black power, of the voting power, the voting strength of the City.

And, I, at the time of the deposition was thinking of that magic percentage, which was the total population percentage of 51 percent.

And the ward plans that I mentioned at the deposition, of what I thought was perfectly fair, was 4 black and 4 white and a swinging ward, tending to black. And that, mathmatically, was certainly as much as a 51 percent total black population whould have normally required.

Since the deposition, however, the additional fact that I have found that makes me want to change my answer to that question is that, in fact, the voting age population, instead of being as high as 51 percent before annexation, it was, in fact, only 45 percent.

And, with an at-large election, it would be a long time, I believe, before blacks would have any potential power if you assume all blacks vote black and all whites vote white, which I don't assume; and I don't like to think about; but if that's the assumption that [510]



everybody's talking about here, then it seems to me that my answer was in error.

With that fact, I could change it. With only 45 percent voting age people, 18 years or older, existing in the old City before any annexation, that it would surely change my opinion on the answer to that question.

And, I didn't know that fact at the time of the deposition.

* * *

Q Do you know, or have any statistics that indicate what percentage of white people who are registered vote, and what percentage of black people who are registered vote?

A No, sir. I don't have of that information.

Q Then faced with – even assuming, for the sake of argument that the 45 percent voting age population was a correct figure, even assuming that, unless you knew what percentage of black people who are able to vote, voted, as opposed to what percentage of white poeple voted, voted; you wouldn't have any way to know the significance of that 45 percent at all, would you?

A [511] Based on the assumptions that I used at the deposition, and I used it in Court today, assuming that blacks vote black and whites vote white, which is what we've been talking about, then –

Q You are assuming that all black people that are qualified and able to vote, vote; and all white people who are qualified and able to vote, vote?

Is that your assumption?

A On the 45 percent; yes, sir.

Q Do you believe as a matter of fact that 100 percent of the people vote?

A That what?

Q That 100 percent of the people who are of age, vote?

A No.

Q So, is it not also – would it not also change your opinion if 90 percent of the black people who could vote, voted, and only 50 percent of the white people who could vote, went to the polls?

It would make a difference wouldn't it?

MR. RHYNE: This is so speculative, Your Honor.

MR. VENABLE: He's the one who's speculating, Your Honor, and I'm trying to point out how speculating [512] his figuring is.

MR. RHYNE: He's talking about 90 percent and 40 percent, and he's talking about actual facts.

JUDGE MARGOLIS: I'll overrule your objection. He's an expert, so let him testify.

BY MR. VENABLE:

Q It would make a difference wouldn't it?

A Yes. None of the whites vote and all of the blacks vote, it would make a difference; but that's not –

Q Switch it back around the other way, wouldn't it?

A Yes, sir; but those figures are extremes. Although I don't know the exact percentages and –

Q You don't know, do you?

And, you're not an expert qualified to –

JUDGE MARGOLIS: Let him finish.

THE WITNESS: On the, 90 percent of the blacks



vote, on the contrary, the registration is probably lower.

BY MR. VENABLE:

Q Do you know what it is?

Have you ever inquired to see any statistics?

A I've seen the percentages in the past, but I can't quote you statistics.

Q [513] You've seen the percentages of people that are registered to vote?

A I have.

Q How many black and how many white are registered to vote?

A No, I think that's total population.

Q Total population.

A But nothing like 90 percent.

Q So, you have no idea what percentage of the black community is even registered, do you?

A No, sir.

Q And, you have no idea of what percentage of those registered in the black community vote, do you?

A No, sir.

Q Nor do you have a corresponding knowledge about the white vote, do you?

A No.

Q I don't have any further questions, Your Honor.

JUDGE MARGOLIS: Mr. Rhyne?

MR. RHYNE: We have no redirect of this witness.

* * *

A [722] I think that the calculations that were made included both – minority numbers of the blacks and whites.

Q But this disenfrachisement figure is one of the criteria that you put into your assessment of the ward plans, is that correct?

A It was sort of an after – yes, I guess it was one of the criteria. It was one of the things –

Q Was it a –

A It was a fact considered, really, after reaching a sort of conclusion of the wards.

* * *

**D. Testimony of Henry L. Marsh, III**

Q [574] Mr. Marsh, will you state your full name for the record, please.

A Henry L. Marsh, III.

Q And where do you reside, Mr. Marsh?

A 3211 Q Street, Richmond, Virginia.

Q How long have you been a resident of Richmond?

A In one sense, all my life, thirty-nine years.

[575] I did leave Richmond on two occasions.

Q When were they?

A When I was in elementary school, from the ages of five to eleven, when I attended school in a county near Richmond, about seventy miles from Richmond.

Again, when I attended law school here in Washington and went in the service for six months and worked in Washington for about a year.

Q Where did you go to law school?

A Howard University Law School.



Q Other than that time, you resided in Richmond all your life?

A Yes, sir.

Q And what is your occupation?

A I am a lawyer.

Q What type of practice are you in?

A I am in a law firm with the general practice of law.

Approximately forty to fifty percent of the firm's practice involves civil rights. Approximately eighty to ninety percent of my activities involve civil rights.

Q In the course of your travels, do you travel to other cities other than Richmond, within the Commonwealth of Virginia?

A Yes, I have handled litigation, school desegregation litigation, within most of the cities of Virginia, and most of the counties.

Q [576] Therefore, you are generally familiar with other cities in Virginia, as well as Richmond?

A Yes, sir.

In evaluating school plans, we have to become familiar with city patterns, transportation patterns.

Q Do you currently hold any elective positions within the city of Richmond?

A Yes, I am a member of the Richmond City Council and I am currently serving as Vice-Mayor.

Q For how long have you been a member of the Richmond City Council?

A Since July of 1966.

Q How many times have you run for Council?

A I have run for Council four times and been elected three times, 1966, 1968, and 1970. In 1972, I

ran, but a week before the election was to be held, the Supreme Court stayed the election. There were four campaigns and three elections.

Q Are you aware of the support which you have received from blacks and from whites within the city of Richmond?

A Yes, generally within the past two elections, I received about ninety-three or ninety-five percent of the black vote and about thirty percent of the white vote.

Q Do you hold any appointive positions in government?

A Yes, I am one of City Council's representatives to the Richmond Regional Planning District Commission for our region.

Q [577] Is that the organization which Mr. Todd testified he once worked for?

A Yes, that represents seven or eight jurisdictions immediately around Richmond and the city of Richmond in the regional government structure.

I have been one of the city's representatives since, I think, July of 1970.

Q Are you currently involved in any other political activities?

A Yes, I have been appointed to several committees by the governor – Criminal Justice Commission, State-wide Commission for the Study of Governmental Problems.

I am also active with the National League of Cities. I am on the Board of Directors of the National League of Cities. That's an organization of all the cities in the country.

I am President-elect, First Vice-president, of the National Black Caucus of Local Elected Officials.



Q What sort of an organization is that?

A That's an arm of the National League of Cities. The black delegates to the League caucus and have their own organization.

They are recognized by the League of Cities and by the United States Conference of Mayors, a national organization of city governments.

The NBC Leo, as we call it, functions within both [578] organizations.

At this year's convention, I probably will be elected president.

Q Would you briefly outline the history of your political activity within the city of Richmond.

A Before getting elected to council, I returned to Richmond in 1961 and became active in numerous community organizations. These included the NAACP, Community Action Programs, Model Cities Program, Urban League, and scores of other organizations.

THE COURT: How long have you been Vice-mayor?

THE WITNESS: Since 1970, Your Honor.

BY MR. PARKER:

Q As a member of Council for seven years and in the course of your political activities before being elected to Council, are you familiar, or did you become familiar with the neighborhoods of the city of Richmond?

A I would think so.

We campaign at large and we have to go into the various communities to campaign.

We have various zoning matters and other matters coming up from all areas of the city.

Q What are the factors which create neighborhoods?

A In my mind, a neighborhood is a geographical area created, as I think Mr. Todd indicated, by historical development [579] and other factors.

They are created by patterns of change occurring by governmental action or otherwise.

A neighborhood is a group of people living in a certain area.

The factors which create them are just historical development and governmental action and private action.

Q You said something about change.

Are neighborhoods permanent?

A No, neighborhoods change.

This is especially true in Richmond, where complete areas are redeveloped. In other areas, rehabilitation occurs.

Highways and other public projects will eliminate a particular neighborhood.

A neighborhood could be a small group of people in an area of a half a block or in a large area of a square mile or so.

Q Well, there is not a definite amount of people who live in a neighborhood?

A I don't think so.

I think a neighborhood could vary on, really, the eye of the beholder and what he uses to determine what he's looking for.

Q In your eye, approximately how many neighborhoods do you think there are in Richmond?



A Without having made a study, I would say at least [580] there are at least three or four hundred.

There are certain areas cut off from other areas, which, in my opinion, are neighborhoods because they are cut off.

Q Are you familiar with the civic associations in the city of Richmond?

A Yes, I would think so.

Q Do you consider civic associations to be the appropriate vehicles for reflecting the sentiments of neighborhoods?

A No, not really.

I think in certain instances and on certain issues, where the interests of all the people in the neighborhood are unified, a civic association can represent the interest of the neighborhood; in many instances, they do not.

This is true for several reasons.

One, only a small percentage of the people living in a given area participate in a civic association. My experience has been that most of the people in a given area do not participate.

On a particular issue, certain people in a particular neighborhood or community would be on opposing sides; the next week, they would be together. We've had situations where civic associations have been split right down the middle.

I think for the purpose for which they were set up and for what they were supposed to do, they do a pretty good job, generally.

[581] To answer your questions specifically, the true sentiment of a neighborhood or any particular

area. On some occasions, they might reflect the sentiment, not on all occasions.

Q We have heard a lot about communities of interest. What, in your mind, is a community of interest?

A When a group of people have a common interest, a common goal, a common objective, in my mind, they have a community of interest. This usually relates around a particular issue.

Q Do communities of interest coincide with neighborhoods?

A No, sir, they do not.

A community of interest might be city-wide; it might represent several neighborhoods; it might represent a regional area; it could be along racial lines.

Q How do communities of interest relate to neighborhoods?

A I think on some issues the community of interest might actually coincide with the neighborhood. On other issues, the neighborhood might not have any relevancy at all to the community of interest.

I don't think there is any relationship to the two.

Q You speak of communities of interest in terms of issues.

Does that mean that communities of interest are not as fixed as neighborhoods?

A That's true.

Neighborhoods are fixed, in a sense, because they are there. They change from time to time but they don't change as [582] fast as communities of interest.

When an issue comes along, the people who are excited about it are excited about it until it is resolved.



Sometimes, in a matter of weeks or months, the issue is resolved and that community of interest disappears.

It's my opinion that it's a temporary thing. It can be a community of interest that lasts over a long duration; but it certainly has nothing to do with the neighborhood. That's the point I am trying to make.

Q In dividing Richmond into nine single member elective districts for the purpose of electing city councilmen, what criteria would you use?

A Well, I think equality of population to the extent required by law would be a criteria.

I think race — you are speaking of Richmond, Virginia, now?

Q Yes.

A Race would be a criteria.

And, to the extent possible, protecting the integrity of the neighborhood should be a criteria; but I wouldn't give that as much weight as I would the other two.

Q How many neighborhoods did you say you think there are in Richmond?

A I would say two or three hundred, without making any survey or any count.

Q [583] Why do you think race is important in Richmond?

A This is not just in Richmond. I think it's important in Richmond and everywhere else.

It's important in Richmond because, as I think Mr. Todd nentioned yesterday, I think the purpose of government is to meet the people's needs.

Many of the needs of the people in Richmond relate to race.

The governmental decisions in Richmond relate to race – the kind of education blacks will get, the kind of police protection people in a particular area will get.

I might say that the housing pattern in Richmond is mostly segregated. In large areas of the city, only blacks live or only whites live. There are some fringe or transition areas; but, for most of the city, you don't have that much mixture.

In terms of meeting the needs of the people in any particular area, race becomes important.

Blacks in the city are interested in getting the best possible education. They want education to train them for jobs. It becomes an issue.

It becomes an issue in regard to how much of the government's resources go to education, how much of the government's resources go for police protection for their area, as opposed for other areas.

I think the history of Richmond, as indicated by this [584] record, would indicate that race is, perhaps, the dominant factor in determining the quality of life that people enjoy of a particular race in Richmond.

Q We've heard a lot about physical boundaries in terms of drawing ward lines on a map of Richmond.

You did not list physical boundaries as a criteria for drawing wards.

What is your opinion of the importance of physical boundaries in drawing single member districts for the city of Richmond?

A I don't think they are that important. I think they are neutral.

Q What do you mean by neutral?

A A physical boundary can be important if it relates to a particular area. A physical boundary can



also be unimportant; for example, you can live next to a park and not really be that concerned about it.

In my personal experience, I lived for seven or eight years near a park seven or eight blocks from me and I wasn't really that concerned about the park. I rarely went to the park.

When I moved to the east end of Richmond, Ward G, because I had three young children who like to go to the park to watch the animals, I'm far more interested in the park now than when I lived a few blocks from it. You would assume that because I lived near the park earlier I would be interested in it.

[585] If you had assumed this, you would have been wrong.

What I am saying is that the existence or non-existence of a physical boundary is a neutral thing.

There are regional physical boundaries, there are city-wide physical boundaries which have nothing to do with a particular neighborhood.

I think it's a mistake to assume that because a physical boundary is in an area that the people in that particular area are necessarily interested in the physical boundary. In some cases they are; in some cases they are not. It's a neutral boundary.

It has to become connected with a community of interest before it becomes important.

Q What would you think of a physical boundary such as a street? What would you think of that?

A I don't think that's much of a physical boundary at all.

As a matter of fact, Chamberlain Avenue was referred to in testimony earlier, and I happen to know that on both sides of Chamberlain Avenue we have similar development. It's almost like a carbon copy.

There are rows of apartments.

The people living on both sides of Chamberlain Avenue have far more in common –

I'm looking now at at Exhibit 15, wards B and C.

The line splitting those two wards, Chamberlain Avenue, [586] and on both sides of Chamberlain Avenue you have rows and rows of apartments.

I'm saying that the people on both sides of Chamberlain Avenue have far more in common than people who live within the inner circles of B and C because these are single-family homes.

Their interests are hostile or certainly not synonomous with the interests of the people in these apartments.

If you are going to set up ward lines based on communities of interest, you include people on both sides of Chamberlain Avenue.

As a matter of fact, in that instance, the boundary line – the physical boundary – is something that pulls people together on both sides, rather than divides them.

Q Can you think of any other physical boundaries which pull people together?

A Well, in this case the river, the thing that the City is talking about, is another example of a boundary which doesn't divide people who live on both sides.

Q Why is that?

A If you look at this same Exhibit 15, wards A and D, on both sides of the river are people living along the river front.

The homes above the river bed are similar. They're extremely expensive homes. They have a view of the river and an interest in the river.



[587] Their concern and common interest in the river would be far greater than that of people living in ward A or ward D long distances away from the river.

I think in this instance, if you are talking about communities of interest comprising a ward, It would be far better – I'm not saying I would do a ward that way – but you have people on both sides of the river with a common interest in protecting the river, low pollution, physical features around the river.

Highrises would be a factor as to whether you could see them on the other side.

If an unsightly structure went up, they would be concerned about it.

I don't think, in this instance, the river is, necessarily, a barrier which divides people on both sides.

Q Do you think a councilman living north of the river would have any problem supporting bridges?

There was some testimony as to the problem of traffic across the river.

A We have built seven bridges over the years.

Up until 1970, we had not had any councilman south of the river for fifteen years. We had little or no representation from south of the river.

Those of us who were elected north of the river have represented people south of the river.

[588] We take an oath to represent all of the people to the best of our ability. I do, and I believe all members of the council do that.

I see no problem.

The whole at large system is based on representing people all over the city.

I can't imagine any councilman having any problem representing people because he had a ward split both sides of the river. I think it would be helpful.

Q Why do you say it would be helpful?

A One of the purposes, I think, is to bring people north of the river and south of the river closer together.

I think with a ward straddling the river and a councilman representing people on both sides of the river, this would certainly have a tendency to do that.

This would bring the people on both sides of the river closer together, because if they had political considerations and political decisions to make as a ward, they could come together.

Q If a ward straddled the river, would somebody who lived on one side have to cross the river to vote?

A No, I would be opposed to having a precinct straddling the river for voting purposes. I think that would be inconvenient.

What we are talking about is wards for the purpose of electing representatives.

[589] Certainly, you vote in your precinct; but your councilman represents the area.

I see no problem with electing people; but I wouldn't want to go across the river to vote.

Q You testified that in your races for your campaigns for council, you received different degrees of support from whites and blacks.

I would like to know if you also received different degrees of support from the different parts of the city.

A Yes.

As I indicated, the city is segregated along racial lines, more so than most cities, I would say.



For instance, ward G, where I live, except for a part of the bottom tip of ward G – there's a white enclave on the hill – that ward is almost totally black.

Ward D is almost totally white; ward A is almost totally white.

The support I received in ward G and ward F was around ninety to ninety-five percent. I happen to live in ward G.

The support I received in ward A and ward D was twenty to thirty percent. These are wealthy white areas.

Actually, the number of voters varies: The eastend wards, G and F, are very compact. There are a lot of people over there; but there are not a whole lot of registered voters. The voter registration in those wards is about nine or ten [590] thousand a ward.

In wards A and B and D, the voter registration is about eighteen, nineteen, or twenty thousand people, out of an equal population of approximately twenty-seven thousand.

There is a difference in the character of the neighborhoods. There is a difference in the degree of citizen participation. This is because of economics. People who are economically well-off and own their own homes usually vote better. In Richmond, these are mostly whites.

People who are economically poorer, don't participate as much and don't vote so much. That's why the statistics are that way.

The same thing applies to ward H, which is a mixed ward of whites and blacks. The whites support me over there about twenty or thirty percent; but the voter registration in that ward is higher for whites than for blacks.

* * *

Q For the record, the ward letters you have been referring to, you've been having reference to Plaintiff's Exhibit 15. Is that correct?

A Yes, that's correct.

Q As we've talked about this morning and over the last [591] few days, we've heard a lot about community of interest as a criteria for dividing the city into nine wards.

It addition to not listing physical boundaries as a criteria, I also believe you did not list communities of interest.

Why not?

A That's correct.

I also did not list religion and some of the other factors. There are many that could be listed.

I do not think these matters are important. I don't think they are good criteria for drawing wards for electing councilmen in Richmond or, I would say, in other cities as well.

I think the idea of having a councilman representing a homogeneous group of people is bad, whether it's an economic group or otherwise.

In the first place, that map, Exhibit 15, doesn't do that. If the map had been drawn to include people of similar economic development, they would have put circles or semi-circles from the outer edges. This map doesn't do that very well.

If you have councilmen elected from homogeneous economic groups, only, again, you are going to add to the polarization.

I think there is some advantage in having a mixture in a given ward, so that councilman, as he gets



input from some different people, will not get input from just one kind or one type of people; he will get input from different groups. This helps him when he has to meet with other councilmen from different [592] groups.

Obviously, with as many neighborhoods as you have in Richmond, you're going to have to put a lot together; and the question is which ones are you going to put together.

You can put together any combination you want, depending on what your objective is.

I would not have as an objective getting a community of interest to the extent that you would have people of like interests in a particular ward. This would have councilmen coming together in a polarized – potential for polarization – because their constituency would only be one group, economically; and, therefore, rich would be pitted against poor. I don't think this is the way it ought to be.

I think it is good to have a certain mixture in your consistuency. It helps keep the politician honest; it helps give him information; it helps give him input.

I do not think that would be a good idea. That's why I can make that conclusion.

Q If you were to try to draw wards based on communities of interest, recognizing they are somewhat transitory, I believe you testified, how would you go about doing this?

A In the first place, you would have to have a very accurate survey of interests to determine communities of interest.

You have to find a way to determine the position of people on issues; and you can only do this by taking a careful [593] survey.

Of course, this hasn't been done, as I understand it, in this case; but you would have to do that in order to have any accuracy in terms of what the communities of interest would be.

Secondly, if you took it, it would only be true for that period of time.

Q What do you mean by normally true for that period of time?

A Well, six months later, or a year later, you would have to take another survey. Somebody would come up with an idea of running a highway through or for the city doing something and another group of issues would come along.

Conditions change in neighborhoods.

In Richmond, as in other communities, neighborhoods go through cycles.

These historical neighborhoods that Mr. Tood defined yesterday, when they were set up, the finest people moved in to them, in Richmond, the wealthiest people. As time went by, they moved out and other people moved in.

Neighborhoods go from white to black and they change.

This community of interest thing is very fleeting. If you did it at a given point in time, you would have to do it six months later. You would have to change your wards very often in order to have an accurate ward system based on communtiy of [594] interest.

That's another reason why I don't believe it's a feasible way of doing it.

* * *

MR. RHYNE: Thank you, Your Honor.

At this time, I would like the document I have



handed to the deputy clerk to be marked as Plaintiff's Exhibit Number 20-A.

At this time, I would like to hand a copy of this to His Honor and to other counsel.

* * *

Q [595] I am going to hand you a document that has been marked for identification as Plaintiff's Exhibit No. 20-A.

* * *

[606] I would not press it any further here. I will, if necessary, call the authors of the report

I have no further cross-examination, Your Honor.

THE COURT: Very well.

MR. VENABLES: Your Honor, before we go further with cross-examination, might I make a statement in furtherance of my objection.

THE COURT: He withdrew.

* * *

[609] BY MR. VENABLES:

Q Mr. Marsh, isn't it true that you don't, in fact, know the true registered voters numbers or the actual percentages of white or black of registered voters in the city of Richmond, other than your own estimates?

A If you mean to the precise number, I don't know.

I have a very good idea of the numbers of registered voters in different sections of the city.

As a politician, you really have to know that to run for office.

Q But the actual percentages of black and white are just estimates on your part. That is correct, is it not?

A No, I've seen the actual percentages for the various wards.

Q As prepared by the registrar?

A That's right.

Q Does the registrar prepare black and white percentages on registration; I thought that was prohibited by law, Mr. Marsh.

A No, it is not my understanding that it is prohibited by law.

I'm not saying they're official; but the registrar has ways of determining.

Q I see.

A [610] Those figures are actually in existence for each of the wards.

The figures I gave are substantially accurate.

Q Thank you, sir.

Now, Mr. Marsh, ward plan, Exhibit 15, sitting over there on the wall – how many white wards and how many black wards up on there?

Let me give you my definition of a white ward: A white ward would be one where, in your experience as a politician, a political figure in the city of Richmond, there would be no doubt as to the outcome of an election, should the only issue be white and black.

In other words, a ward which is oriented to the white political point of view.

How many are on that?

A I am not sure I accept that definition.

Q Well, give me your definition.

A If you mean a white ward in the sense that the majority – the person likely to be elected from the ward would either be white or would be sympathetic to "the white point of view in Richmond," I would –

Q I'll accept that definition.

A Then five of those wards are white wards.



Q And which ones are they?

A I, H, D, A and B.

Q [611] Which wards are, assuredly, black wards?

A Again, I'd like to get to the definition.

These are wards where either a black could get elected or a person sympathetic to the viewpoint of blacks in the city.

Q I'll accept that definition.

Accepting that definition, which of those wards would, unquestionably, be black wards?

A I would say C, G, and F.

Q The only ward you haven't mentioned as either being identified as either, assuredly, as white or, assuredly, as black is E.

MR. VENABLES: Your Honor, if I might – I forgot to bring my racial breakdown of that map.

THE COURT: Surely.

[Mr. Venables returns to counsel table to obtain breakdown referred to.]

MR. VENABLES: Thank you.

BY MR. VENABLES:

Q Have you seen City Exhibit 18, Mr. Marsh?

A I believe I have.

Q These are the corrected figures, I believe, of this Exhibit 15.

MR. VENABLES: Could Exhibit 18 be handed to the witness, Your Honor?

THE COURT: Certainly.

[612] [Mr. Parker supplies the witness with a copy of City Exhibit Number 18.]

BY MR. VENABLES:

Q How close in ward E can you come to the percentages of white and black in a voting situation, if

the issue was divided racially?

Why do you say that that's not a white or a black ward?

A These figures are a little misleading. These figures show that 64.6 percent are black. There are some problems with that. Consensus data on which these figures are based indicates that about thirty-six percent of the black families, black population, is under the age of eighteen, and only twenty-five percent of the white population is under the age of eighteen.

These figures would have to be adjusted in terms of people eligible to be registered to vote. This 64.6 figure would be reduced by the appropriate percentage.

I'm not a mathematician.

Q Certainly, I understand.

A As I indicated earlier, the white registration is higher than the black registration.

You would have to reduce that figure even further to get the actual number of people who registered to vote.

A further qualification, before I could make that kind of addition would be the resources required in order to get out to vote – these resources would be in the white community.

[613] The poorer black is at a disadvantage in getting out to vote.

This ward, in my mind, would be contested; that's why I couldn't make the same assertion as in other wards.

Also, there are a lot of diverse communities in this ward.

Q If a ward system were devised that had four black and four white and one swing, as has been



previously testified to in this case, that would, in effect, mean that all of the concentration of the political structure would be concentrated on the swing ward. Is that not ture?

If you had a ward plan that presented four black wards and four white wards and one ward up for grabs, that means that the majority of the concentration of political effort between a black group and a white group would be concentrated within that one ward. Isn't that true?

A As a general statement, I think you can expect that to happen.

Again, that's just a prediction; I don't want you to hold me to that.

Q Oh, no, of course.

When you begin to talk about ward plans, you have to talk somewhat on assumptions and possibilities that don't yet exist.

You are in a vacuum as well as national, international, [614] and economic things of that nature.

But, if you had four white and four black wards and one swing, as far as the racial implications, the struggle between black power and white power, the concentrated would by nature have to be in the swing ward, with relatively little bit in the assured wards.

That would be a generally correct statement, would it not?

A Yes, if you make some assumptions.

Q Well, certainly.

Would it make you more comfortable if I spelled out my assumptions?

A Assuming that the spirit of competition would not develop within these other wards – ward E, for instance, could be highly spirited; and a lot of effort could be devoted there.

Q Certainly.

But I'm asking you about a ward system that has four white wards and four black wards.

The black point of view is going to be in the majority in the black wards. The white point of view is going to be in the majority in the white wards.

We are now looking only on a campaign issue of white and black.

For the political control of the city, the fight would be concentrated in the swing ward, would it not?

A [615] Yes, as a general statement.

Q The City's plan shows as a swing ward, in your opinion, E.

The mayor testified he considered the swing ward to be H.

Would you, for the record, state from Exhibit 18 what the percentages of black and white are in H.

A 59.1 percent white, 40.9 percent black.

Q Is it not true that before the annexation there were fifty-two percent black people and forty-eight percent black people in the city of Richmond?

A Yes, according to the census figures.

Q Is it not also true that after annexation there were forty-two percent black?

A Forty-two and a half percent, according to the census figures.

Q Forty-two and a half percent black.

A Yes.



Q So, we concentrate the struggle for white and black power in that ward.

The blacks have less percentage than they even had at large after the annexation and twelve percent less than they had before annexation. Isn't that true?

A Well, –

Q Under the figures supplied by the City?

A Yes, I think you might have understated your case. [616] I will qualify my answer to that a little bit.

Q Well, first of all, that's a true statement, it it not?

It is reflected in H that forty percent black is two and a half percent under the black percentage of the city after annexation and twelve percent under the percentage before annexation.

A If your math is correct, that's true.

Let me explain again, this figure here of total population does not reflect that blacks comprise that percentage of the people who are eligible to vote in the ward, according to my earlier testimony.

Q As a matter of fact, the voting age population in that ward for blacks is somewhere around 38.5 percent, isn't it?

A I'd say so.

Q So you would be fourteen percent below what the figure was before annexation.

* * *

[617] THE WITNESS: Yes, I would not want to compare that with the fifty-two percent.

* * *

Q Mr. Marsh, as a black citizen in the city of Richmond, as a black politician in the city of

Richmond, would you be satisfied with a ward plan that had three black wards in it?

A No, sir.

Q Would you be satisfied with a ward plan that had only four black wards in it?

A No.

Q How many black wards would you have to have before you would be satisfied with a ward plan?

A Well, –

Q [618] Five?

A I think five would be a satifactory resolution of the issue.

Q If you could not have a ward plan which assured five black wards, would you then favor deannexation?

A Yes, I would.

Q Thank you, sir.

I have no further questions.

THE COURT: Did you testify in Holt I?

THE WITNESS: Yes, sir.

I would like to explain my last answer to the question.

THE COURT: Mr. Venables's or mine?

THE WITNESS: Mr. Venables.

THE COURT: All right.

THE WITNESS: My preference for satisfying the Voting Rights Act would be a ward plan which fairly protected the rights of blacks in the city of Richmond.

I think a ward plan can be devised and has been devised which does that. I would prefer that.

As a solution to the problem, I greatly prefer that over any deannexation or anything else.

This is primarily because I believe the Voting Rights Act would not be satified by permitting – by



the dilution that would occur by deannexation.

I am concerned about some of the effects of deannexation.

[619] THE COURT: What would those effects be. What would be the problems, the economic problems, if deannexation were ordered?

THE WITNESS: I think the problems that the mayor mentioned about losing land.

The City has assumed a certain amount of tax.

Problems would result to the school area.

When you weigh that against that satisfying a violation of constitutional rights, I think that these inconveniences and these other things should be not permitted to overcome the Voting Rights under the Constitution, the Fifteenth Amendment Voting Rights. The Fifteenth Amendment Voting Rights is really sacred, in that the voting process itself is an extremely patient way to promote change.

The voting process assumes that the voting majority will prevail. To a person in a minority, when he opts to participate in the voting process for change, then he is subjecting himself to that.

I think that because of all the dangers in this and the slow process by which change has occurred, it is sacred and should not be tampered with.

In order to protect that, you really have to overcome these disadvantages to the City.

I think that having a territory in the city would not help the City that much, if the priorities of the City are not [620] based properly in satisfying the substance of the Voting Rights Act.

* * *

Q [621] In your opinion, would that plan R assure five black voting wards?

A No, sir, it wouldn't assure it; but it would give a greater opportunity.

The same problems which I mentioned about the other wards would be present here.

Ward E would be in jeopardy; ward H would be in jeopardy.

When you adjust the figures to the reality, it would be quite a struggle; but it ought to, at least, assure a possibility of blacks influencing the candidate being elected to the greater extent.

The political process would have to work there.

The reason a candidate is elected in a ward would have a lot to do with it – his philosophy, too. The effort may [622] be on him.

At least, it would give a far greater opportunity to the other plans – the plan on the map, City's 15, that plan preserves, to quite a majority, the present situation we have now.

* * *

**E. Testimony of Melvin W. Burnett**

**[673] DIRECT EXAMINATION**

BY MR. VENABLES:

Q Would you state your name, please.

A Melvin W. Burnett.

Q How do you spell your last name, sir?

A. B-u-r-n-e-t-t.

MR. VENABLES: Your Honor, we offer Mr. Burnett in the same qualifications of expertise in local



* * *

[620] I think that having extra territory, with the priorities fixed as they were in the past, would not be to the interest of the black person.

It would not be consistent with the spirit of the Voting Rights Act.

THE COURT: Thank you.

MR. VENABLES: I have no additional questions.

MR. PARKER: I have a few questions.

REDIRECT EXAMINATION

BY MR. PARKER:

Q Mr. Marsh, you testified just now that there had been a plan prepared which you felt would satisfy the requirements of the Voting Rights Act.

Could you identify that plan?

A One of the Crusade's plans, Q or R.

I would have to look at it. I'm not that familiar with it.

Q I show you Defendant's Exhibit Number 21 for identification.

Is that the plan?

A Yes, this is the plan that I think would, in my opinion, satisfy the Voting Rights Act.

* * *

government as we offered him in the pretrial conference on Monday and as was offered and accepted by the Court in Holt I.

THE COURT: Let's find out who he is first and what his expertise is.

MR. VENABLES: Certainly.

Q BY MR. BENABLES: What is your position and for whom do you work, sir?

A I'm the County Administrator of Chesterfield County.

Q How long have you been the County Administrator of Chesterfield County?

A A few months shy of twenty-five years.

Q Would you describe the geographical boundaries of Chesterfield County.

A It lies, roughly between Richmond and Petersburg and contains four hundred and forty-five square miles.

Q Thank you.

What kind of a county – what type of a county is it?

A Sir, it's –

Q [674] Can you characterize it? Is it predominantly rural? What are its characterizations?

A It used to be an agricultural county. In the last twenty or thirty years, it's become now an industrial county. We are the largest producer of nylon in the world and we have many other kinds of industry there.

Q Do you have densely populated urban areas in the county as well as agricultural areas?

A We have four cities on our boundaries, yes. They are Richmond, Petersburg, Colonial Heights and Hope-

well. We do have dense population areas—somewhat dense. We have Chester and its environs.

Q And what is the form of government in Chesterfield County?

A A Board of Supervisors runs the government. It's what we used to refer to as the Executive Secretary system of government. That was changed by General Assembly last year; it is now called the County Administrator.

Q Is your position that of County Administrator?

A Yes.

Q Do you keep the records of the Board of Supervisors and the minutes and put into effect the directives and orders?

A Well, my duties are, generally, to manage the county. I do this at the pleasure of the Board. I keep the Board's minutes and I meet with the Board at all times.

[675] In short, I'm the agency through which the Board speaks, acts, and carries into execution its desires and its wishes.

Q Have you ever been the managerial executive to oversee and implement a deannexation of the territory over which you had control?

A Well, annexation or deannexation depends, I suppose, on where you are.

In 1970, twenty-three square miles was taken from the county. It was deannexed from the county and added to the city, or annexed to the city. It makes a difference as to where you are at the time.

Be that as it may, I've been through three of these exercises. Two were with Colonial Heights. One was



with the city of Richmond and I might say that one lasted some ten years.

It was my duty at the last annexation to see that the transition of land, records, et cetera, was accomplished with the minimum amount of trouble and problems. I think we accomplished that. I think the City was somewhat surprised to know that we could cooperate to that extent.

Q Mr. Burnett, what is your educational background?

A I have a B.S. degree from the University of Richmond and a Master's Degree in Management from the University of Richmond.

Q And you have been the Executive Secretary, County [676] County Administrator, of Chesterfield County since when?

A 1949.

Q In that capacity, have you served on joint planning commissions with city governments in planning districts and participated in city-county meetings, affairs, and things of that nature?

A Yes, sir, without end.

Q You have been previously qualified as an expert in local government, have you not, sir?

A Yes, I have.

Q In cases other than HOLT I?

A Yes, I have.

THE COURT: Are there any objections as to his qualifications?

MR. DERFNER: None, Your Honor.

MR. BIXLER: We have none for the United States.

THE COURT: I understand you object to his entire testimony; but you don't object to his –

MR. RHYNE: We don't argue with his qualifications. We do feel it is irrelevant and immaterial to this case.

THE COURT: All right.

He is qualified in the area designated.

MR. VENABLES: Thank you, Your Honor.

BY MR. VENABLES:

Q Mr. Burnett, you said you were the agency through which [677] the Board speaks, acts, and carries into execution its desires and wishes.

Are you empowered to speak for the Board of Supervisors of Chesterfield County in this case?

A Yes, I am.

Since 1971, I have been under continuing authority from the Board to represent the county in this case.

MR. VENABLES: A resolution was introduced into evidence, Your Honor, in Holt I relative to this grant of authority and the Board's wishes. It's in evidence in this case as Plaintiff's Exhibit Number 37 in the Holt record.

We would move to make it Defendant-Intervenor Holt Exhibit 2, I believe.

I believe I have one other which was introduced earlier in cross-examination, I believe.

To make it easier to identify, we can leave it as Plaintiff Exhibit 37 because that's what we have written on it in the record.

THE COURT: Do you have a copy of it?

MR. VENABLES: I don't have a copy in front of me, Your Honor. I must have misplaced it.



BY MR. VENABLES:

Q Is that resolution still in full force and effect, Mr. Burnett?

A Yes, it is.

Q [678] Has anything occurred since that resolution or since 1970 which would alter or impair the ability of Chesterfield County to do whatever would be necessary to reassume control and management of the area in question, commonly referred to as the annexed area in the south part of Richmond?

A No, with the exception that the county has grown much stronger financially. We have grown much stronger in the last two years.

I think we are far better capable now than we were two years ago to take over and carry out the government of this area.

Q I believe you previously testified that you are familiar with what is necessary to oversee and control and effectuate a deannexation. That is a correct statement, is it not?

A Yes, having had some experience in this matter, I think I can speak with some authority on that.

Q In particular, you have overseen and directed and managed the deannexation of this exact territory of Chesterfield County to the city of Richmond, did you not?

A The same twenty-three square miles.

Q Are you familiar with the annexed area?

A Having managed it for some twenty-three years, I think I can discuss back yards with most people, yes.

Q We heard some testimony earlier, Mr. Burnett, that there [679] would be some irreparable harm. I believe Mayor Bliley talked about irreparable harm. He

spoke of the irreparable harm a deannexation order would have on the City.

Do you agree with that statement?

A No, I do not agree with that statement at all.

As a matter of fact, the twenty-three square miles that was lost by the County of Chesterfield in 1970 was the same territory, it housed the same people, it houses the same facilities the same tax revenues that the city of Richmond is now fearful of losing.

It follows that we faced the same problems in 1970 that they are trying to avoid now.

The City's position has long been that the sophisticated government of the City is far better capable of taking care of the needs of the people than Chesterfield County.

THE WITNESS: I say to you, Your Honor, that Chesterfield met this deannexation problem and they solved it. Unless the City is willing to admit that we have a better capability and more expertise in this case, it must say they too can solve the problem.

Bear in mind that the county lost some thirty-eight percent of its revenue. This was revenue we had watched grow from year to year. It was revenue that we built our government on. It was revenue that we needed to sustain our government.

Naturally, it was a shock to the county when it was [680] taken away. Thirty-eight percent would shock anybody.

This is not the same case here. We're talking about twenty percent or less of their revenue. This is revenue that they have had for less than three years.

I don't believe that this would be the great impossible task, nor do I think it would ruin the city as



people seem to think it would.

BY MR. VENABLES:

Q In pursuing that line for a moment, Mr. Burnett, you have heard in earlier testimony in this case, in Holt I, the phrase, "unscramble the egg," have you not?

A Yes.

I think that is a totally inappropriate metaphor.

Despite all the self-serving opinions and testimony to the contrary, I believe that unscrambling the egg is not the great impossibility or mind-boggling task that some people would like to have you believe.

It may be that the county is more flexible, adapted to change. It may be that we have just gone through this exercise of deannexation.

If ordered by the Court, it is, I think, an exercise that can be accomplished quite easily and, with reasonable people, in a very short time.

Q Let's talk for a moment about the mechanics of transferring this property from the City back to the county.

[681] Let's just discuss the mechanical problems.

Would you take off on the water system and just go through mechanically what you have to do to transfer this property back or, for that matter, to transfer it in any direction.

A Well, you would have to break the entire problem down into its components.

First, let's talk about water: We would have to know how many connections have been added. We would have to know how many bonds had been paid off. We would have to know what the revenue is.

When all the numbers are ascertained, it all sifts down to a number of dollars. Reasonable people can

get together on the numbers of dollars; it can be negotiated.

The sewer system is the same way. We would have to know how many bonds had been paid off. We would have to know how many sewer lines had been installed and what were the costs.

These are numbers that can be ascertained without too much expense. When you find these numbers, they can be sifted down into numbers of dollars. Reasonable people can negotiate numbers of dollars.

With schools, it's the same way, perhaps. Schools, perhaps, would be our less – the area that would give us less problems because we really have a sophisticated school system in our county.

We have leaders in the team-teaching concept; we are [682] leaders in the open-school concept–open-classroom concept–; biggest Title III program in the state–that's the disadvantaged learners. We have a program for mentally retarded–TMR. We have a huge program.

What I'm saying is that we have a tremendous school system and we are ready now to take over the job.

As to balancing of the equities in the school system, it all sifts down to the dollars. Reasonable people can negotiate the numbers of dollars.

Q Does the county expect to be enriched in any way if a deannexation order is awarded?

A I don't believe the Court would unjustly enrich either side. It certainly would not be at our request.

Q Let's talk about fire and police departments for a moment, Mr. Burnett.



A The fire department is no problem. The City has, I think, completed the second permanent fire station. It built two other temporary fire stations. We could certainly use three at this time and the fourth could be used after we readjust some of our areas of cost. We would have no problem using the fire stations that they've set up. We've just added fifteen new pieces of equipment in the last three years. The latest piece of equipment was a one hundred foot ladder truck, costing over one hundred thousand dollars. We are quite pleased with our fire department and have just added seventeen new firemen.

[683] With these new facilities, I think we could handle the area again. We had it one time; I think we can do it again.

Relative to the police department that you asked about, may I say that we do just like the City does: We pay overtime to certain police officers, until we can train enough people to substantially take over the police duties in the area.

Q Does there exist a waiting list now for the Chesterfield Police Department?

A We have always had a list of people on file, so that we can hire any new police officer at the resignation of an old one or at the creation of a new position. We can always fill these positions quite easily.

Q There does exist a list now?

A Yes.

Q You have not addressed yourself to the question of records keeping–real estate, tax records, things of that nature.

How would you handle that problem?

A In terms of time, this would, perhaps, be the more critical area.

Q Well, let me stop you for just a moment.

As far as water, sewers, fire, police, – garbage we can talk about in a minute – the normal services, how much time we can talk about in a minute – the normal services, how much time would be required by the county, from the date of an order of deannexation until you could assume control and provide full [684] services in those areas?

THE WITNESS: I think we could do it in thirty days, Your Honor.

May I say that we have been in the area for a number of years – two hundred to be exact. We have governed this area. We know what's there.

It's just a case, I think now, of them walking out and for us to follow on their heels.

BY MR. VENABLES:

Q Let's talk about – the only one we haven't talked about in your services is the sanitation – picking up your garbage. Is there any problem in that?

A There is no problem with that.

The county picks up trash once a month.

Garbage collection is done by private sanitary companies. All of them dispose of their trash and garbage in the county's sanitary land fill.

When this area was annexed, the City hired the same men who picked up garbage before to do the same job. He's doing it now.

Q Where is he dumping it?

A In the county's land fill.

Q Do you anticipate any problems with rehiring that same individual if the land comes back to the county?



A No, sir.

Q [685] Let's come back then to the problem of tax records, court records, things of this nature that you say would take a little more time.

A In the transition of 1970, the county went to great expense in presenting to the city of Richmond its utility records, assessment records, in good shape. We had no problems; the City had no problems.

The City was able to take these cards – no problems – and melding them into their computer operation and continuing government of the utilities and assessment property in a normal fashion.

We would hope the City would do the same for us. If they did, we would have no trouble whatsoever.

Q Let me see if I can review in my own mind for the Court:

The water system – you say there's no problem – the county has capacity and capability to serve the area?

A The county not only has the capability, it has the capacity. It probably has a better water supply than the city of Richmond.

Q Could you use the waterlines installed by the City since annexation?

A Yes, sir.

We can use almost every one of them. Some of them might be running the wrong way, that is, decreasing in size the [686] wrong way; but for the most part, we can use them all.

Q How about sewer system?

Can you –

A Sewer system is no problem either.

Most of the lines that the City put in were

installed on plans that the county had developed.

We have no problems at all with the sewer. We can use every foot of sewer lines that they put in.

Q Mr. Burnett, I remember in Holt I there was some testimony relative to the takeover of the fire department. There was a difference in threads.

What is that problem? Could you bring it out to the Court. Talk about it.

A The county uses a national standards thread in its fire hydrants in the fire department. It's recognized – the thread – throughout the nation.

The city of Richmond uses a specialized thread, which is used primarily by the city.

When they annexed this land into the city, they had to change the threads of all of the fire hydrants.

This would be no repudiant job. If they can do it, we can do it.

Q How would you accomplish it?

A Well, in thirty days, we may have a hard time to accomplish it.

[687] There are such things as converters. We could use converters on those fire hydrants that are not changed.

Q Is that what the City did?

A That's what the City did.

Q They used converters on their trucks until they made the change?

A I hope that they did.

Q Mr. Burnett, you obviously went over these very problems with the City when you arrived on price.

How long do you think it would take to sit down with the City, this time, and work out the dollar values of these things?



You did it in two weeks in the annexation, didn't you?

A I think about fifteen or sixteen days. I haven't counted it exactly; but it's in that area.

It would take, I'm sure, from the date of a Court order, at least thirty days. I think we can do it within thirty days, with a Court order.

We can sit down with reasonable people and come up with numbers of dollars.

We're both blessed, I think, with good department heads and people who know the numbers and can readily ascertain the numbers. Most of the work, I think, would probably be done by them.

I think, certainly, we can do it within thirty days.

[688] THE COURT: What problems are you talking about, specifically?

THE WITNESS: Problems of solving the dollar values.

THE COURT: Of what?

THE WITNESS: Utilities, schools, drainage, sidewalks –

BY MR. VENABLES:

Q Does the county expect to get anything free if the deannexation order is presented?

A No, sir, we want to pay an honest dollar for everything we get.

Q Is the county capable, solvent, to do such?

A Decidedly so.

May I point out some of our assets?

Q Certainly.

A We have just sold $18,000,00 in sewer bonds; and we have that money in the bank at fantastic interest.

We have been told by the Water Control Board that we are going to get ten or twelve more millions of dollars if we can fill out the environmental statements.

We have about four or five million dollars in the water fund, which is very well financed.

We have over a million dollars in revenue sharing which is uncommited at this time.

We have 17.7 million authorized in the school bond issue which has not been sold.

[689] Oh, we've borrowed against that about five million dollars.

Our normal bank account runs about twenty million dollars at all times.

I might add that we pay for all of our capital outlays, with the exception of schools and utilities, from our current revenues.

THE COURT: Do you have any estimate as to how much it would cost you to reimburse the city of Richmond?

THE WITNESS: I have no idea, Your Honor.

I know that the cash involved in the last situation was something like seven million dollars in cash. I am sure that they would want more than that because – well, some of this is bonds that they have floated to pay for utilities.

We could assume their bonds, as they did ours. They assumed our bonds in schools, water, and sewer. They merely pay us an amount each month or each six months. When the bonds come due, they pay us their percentage share. There's no problem. We could do the same with them

THE COURT: Thank you.



BY MR. VENABLES:

Q Have you had an opportunity to review the answers to interrogatories filed on behalf of Defendant-Intervenor Holt in this case on the city of Richmond, in reference to what they have built or spent in the area?

A [690] I have, yes.

MR. VENABLES: Your Honor, we move that they be made part of the record and introduced as evidence in this case – interrogatories and answers thereto.

THE COURT: Is there any objection to that?

MR. BIXLER: No, Your Honor.

MR. DERFNER: No, Your Honor.

MR. RHYNE: Your Honor, we have the same objection to this line of testimony, of course, as irrelevant and immaterial.

THE COURT: We will admit the interrogatories and answers thereto, propounded by Holt to the City.

MR. VENABLES: I'll have to go back to my files and pull a set, Your Honor.

THE COURT: Not right now.

MR. VENABLES: I'll also file it with the Court.

THE COURT: I would appreciate it if you would.

MR. VENABLES: Yes, Your Honor.

BY MR. VENABLES:

Q Has the county increased its services in the last three years since you were deannexed?

A Yes, we have.

We have won three national awards; one on the construction of a one hundred-bed nursing home; one on an airport; and the third on a juvenile detention hall. All three of these facilities are designed for the greater comfort of our people.

[691] They are a source of greater income and revenue to the county.

We have doubled the size of our jail.

We have increased the mental health program.

We have improved just about every department in the county.

Not only can we take over the annexed territory, we can, I think, give them much better service now than we could, perhaps, in 1969 when we said goodbye to them.

Q Would you have any difficulty in the administration of the jails, courts, probation offices, mental health programs, welfare programs, and social services were you to suddenly be handed forty-seven to fifty thousand – whatever the population is today in that area?

A No, we have no reservations on that score. We're in good shape in all of those departments.

Q You have heard testimony here today, Mr. Burnett, and the days that we have been here in reference to the loss to the City, on an economic basis, of this area.

I call your attention to the Plaintiff City of Richmond Exhibit Number 16, a colored map sitting on the wall, entitled, "Generalized Existing Land Use – 1971."

Did the city of Richmond satisfy or solve any of its need for vacant land when they got this twenty-three square mile territory?

A [692] The City was supposed to have a really drastic need for open space. They maintained in the court that they needed a great deal of land in which to grow.



The area that they got in the twenty-three square miles – the area you see there in the white – a lot of it is undevelopable. About twenty-five percent of it, you could develop with some economic problems; but about seventy-five percent of that land would be, certainly, not feasible to develop.

Most of it, you will see, is residential. The gray area, I believe, is industrial; and there is very little industrial land there.

Q Did they get any vacant industrial land? If they did, about what percentage did they pick up in available industrial land?

A I don't know the percentage, Mr. Venables. I know the land that is zoned or capable of being zoned for industrial purposes. One is a swamp and one is a large county land fill on which you can't build anything of consequence.

Q So out of the total area designated as vacant, what is the percentage that is even capable of being developed, regardless of how it is developed?

A I would say twenty-five percent of the land in the area was capable –

Q Of the total land, or of the vacant land?

A Of the vacant land.

[693] If you want to run the mathematics through, it would be six and a quarter percent.

Q – of the total land could possibly be developed?

A Yes.

Q In prior testimony, the City has stated in this case that it would suffer an economic loss if it were divested of this property.

Using the City's figures, Mr. Burnett, is this area that they got an economic profit to them now?

A No, sir, it is not.

Q What is the basis of that statement?

A Well, if you go to the Annual Report – the financial report – put out by the auditors, you will find that –

Q This is what auditor?

A The City auditor.

Q You will find that the per capita cost of government is $531 per capita; and if you multiply that by fifty thousand people – and there are more than that in the area now – you will need twenty-six and a half million dollars as a cost of governing the area.

Now, the county received two and three-quarter million dollars in taxes in 1969; the City was said to have doubled that. That would be 5.5 million; but my friends tell me that most of the real estate values went up two and a half times; and the figures in the financial report seem to indicate that it would [694] be a little bit better than two and a half times, which would be 6.8 million or seven million dollars.

The real estate received by the City is about thirty percent of its total revenue; so that if that is true in the annexed area–there is no reason to believe it isn't–you would get about twenty-one million dollars as a total revenue from the annexed area.

We have up here a cost of government, excluding capital outlay, of twenty-six and a half million.

Q Excluding capital outlay?

A Excluding caputal outlay.

If you add, roughly, three million dollars to that, you have twenty-nine and a half million as a total cost of government in the area; and you are still eight and a half million dollars shy of even breaking even.



Q Now, that's your figure on revenue?

A Yes, sir.

Q Has Mr. Kiepper ever testified in this case as to what the revenues in the annexed area were?

A Mr. Kiepper said – in this trial, I believe – that in 1970-71 the City would take in thirteen and a half million.

Q That's much lower than your figure?

A Yes.

And in 1971-72, they would take in fourteen and a half million.

[695] That's about fifteen million dollars off of the break even point.

Q The City has to do some work, which was to create capital improvements, by the annexation trial, does it not?

A Yes, the Court said they had to spend 28.3 million dollars in the annexed area.

Q In how long a period of time?

A Five years.

Q So that would be an additional five or six million dollars a year that they would have to spend on cpital improvements, is that correct?

A If you put them in equal installments, yes.

Q Using the figures supplied by the City in answers to interrogatories and presented in their own publications of budgeting and financial reports, how much have they actually spent in this area in two and a half years?

A In the answers to the interrogatories, they have actually paid out, approximately, seven million dollars in a little over two and a half years.

If they're going to spend 28.3 million, then they must spend over twenty million dollars in less than two and a half years. I just don't believe they are capable of moving that fast.

* * * *

## III Deposition Testimony

### A. Deposition of Dr. William S. Thornton. Discovery deposition taken by Intervenor Holt October 3, 1971.

* * * *

A [42] I am William S. Thornton, 2602 Brook Road, Richmond. I am a podiatrist.

Q And are you politically active, Dr. Thornton, with the Crusade for Voters?

A I am.

Q And you have formerly held a position [43] with that organization as what?

A I was one of the founders of the organization. I was President of the organization from its formation until 1960, I believe, and I served as its Chairman from the time of organization in 1956 until 1970, I think it was.

Q Do you currently hold a post with the Crusade?

A I am only consulting with the Crusade at this time.

* * * *

Q [44] Do you consider yourself a generalized expert on the ward plans versus at-large elections?

A No, I do not.

* * * *



A [46] Well, let me just preface that by saying that we in the Crusade for Voters have, and I personally have continually opposed annexation of any of these areas, I think for as far back as 1961, if I remember correctly. We have opposed any annexation to the City of Richmond. So we are opposed to annexation and we are also opposed to at-large elections.

And I might go further to say that we have opposed at-large elections for the members of the House of Delegates, also.

* * * *

A [52] I am still saying that we are against [53] annexation of that particular area.

Q You are still against the annexation?

A The annexation of that area, but we are also against at large.

Q At large, with or without the area?

A Either way. Either way we are against it.

Q Okay. I am just trying to understand your position.

A We are against it.

Q Now, this polling that you took immediately before coming out in support of a ward plan, which happened in July of this year –

A You must remember that at present, as I told you, I am no longer the Chairman of the Crusade.

Q But you are an adviser and consultant?

A I am a consultant. It could have been that I wasn't at one of those meetings, because I have been out of town a number of times this year.

* * * *

Q [54] Now, tell me, Dr. Thornton, are you authorized to speak now for the Crusade for Voters on their position, not being an officer of that organization?

A [55] Yes.

Q Do you have some form of resolution that authorizes you?

A No.

* * * *

Q [56] The composition of the fifth ward being white, not completely white but essentially white – no transition right now, five and four.

A I would prefer that over what we have now.

Q I am talking about, would you prefer it over de-annexation with at-large election?

A No, I would prefer de-annexation.

Q If you had four all white, four all black and the remaining ward roughly 50-50, with no real population trend racially forecast for five or ten years. Would you prefer that to de-annexation?

A Yes, I would.

Q For the reasons stated prior, about closeness to the people, et cetera?

A Right. Yes.

Q Would you prefer five black wards and four white wards to de-annexation?

A I have no hangups about black and white actually, and in the Crusade we have supported white candidates for a number of positions, for a number of elections.

Q My question was: Would you prefer that to de-annexation?

A I don't have any particular hangup about, [57] you know, the wards being white or black.



Q I understand that. But I am throwing at you five black wards and four white wards, and asking you if you would prefer that to de-annexation?

A I would be delighted with five black wards and four white ones.

Q But would you prefer it? I know you would be delighted, but would you prefer it?

A I would prefer it.

Q And I would assume that your answer would be the same for six wards black, seven wards black, eight wards black, ranging on up the scale?

A Right.

Q Now, coming back to the four white, four black and one in percentage, would you prefer that – we are talking now about a system where that swing ward, I guess that is a good way to describe it, if it were 60 percent white and 40 percent black with no foreseeable population change in composition, would you prefer that to de-annexation?

A Yes, I think I would.

Q At what point would the percentage in that middle ward have to go to white before you would? What point would it have to reach before you would prefer de-annexation?

[58] MR. EDWARDS: (To Mr. Venable) Let me see if I understand you. Does your question say that he is guaranteed four blacks?

MR. VENABLE: Yes.

MR. EDWARDS: And you are dealing now with somebody that is in the middle?

MR. VENABLE: Whether he would prefer de-annexation to five all white and four black.

BY MR. VENABLE: (Continuing)

Q I am trying to figure now, when we get to four and four and have a swing ward, at what percentage would you then prefer de-annexation over the ward system? In what percentage, what racial composition in that swing ward would you then prefer de-annexation?

A Oh, well, let us say for the record about 75 percent white.

Q About 75 percent white? Is there any reason for picking that percentage?

A Well, it wouldn't be a possible chance of a black candidate being elected at that rate, whereas, I think that 60, 40 or 50 numbers, that would play a part in it.

Q Now, Dr. Thornton, is it your belief that the Crusade for Voters represents the only true feeling of

* * * *

Holt v. Richmond, 334 F. Supp. (E.D. Va. 1971)

Pltfs ex. 24 -Mattox Report to Aldhizer Commission with exhibits dated February 5, 1969.

and

Pltfs ex. 25 -"Expand Richmond's Boundaries"

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1974

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No. 74-201

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CITY OF RICHMOND, VIRGINIA,

Appellant,

v.

UNITED STATES OF AMERICA, et al.,

Appellees.

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SUPPLEMENT TO APPENDIX

Holt v. Richmond, 334 F. Supp. (E.D. Va. 1971)

Pltfs ex. 24 - Mattox Report to Aldhizer Commission with exhibits dated February 5, 1969.

and

Pltfs ex. 25 - "Expand Richmond's Boundaries"

February 5, 1969

TO THE COMMISSION TO STUDY THE PROBLEM OF THE EXPANSION OF THE BOUNDARIES OF THE CITY OF RICHMOND

Mr. Chairman and Gentlemen of the Commission:

On behalf of the City of Richmond, I wish to express our appreciation for this opportunity to discuss with you the many problems of the City and its need for the expansion of the boundaries of the City.

A lot has been said about the plight of the central city, and over the past several years the General Assembly of Virginia has addressed itself to this problem in varying ways.

In 1950 House Joint Resolution No. 31 provided for the appointment of a commission to study urban growth with the enumerated responsibility of recommending changes in the fundamental policy of the State. The Commission proposed modifications to the annexation procedure "to permit the readjustment of boundaries of the counties, cities and towns under conditions which will, in so far as possible, do justice to all parties * * *." Adjustment of

Boundaries of Virginia Municipalities and Adjacent Counties, at page 21.

In 1956, House Joint Resolution No. 46 instructed the Virginia Advisory Legislative Council to study the feasibility of consolidating local government units. This study recognized the desirability of reducing the number of units of local government by combining those political subdivisions which have mutual problems and interests. Consolidation of Local Governments and Services, at page 7.

In 1962 the General Assembly again requested the Virginia Advisory Legislative Council to study the laws relating to annexation and consolidation (see Chapter 265 of the 1962 Acts). The resulting report, Annexation and Consolidation, (House Document 16, 1964) indicated strong preference for consolidation rather than annexation.

In 1966 the Assembly established the Virginia Metropolitan Area Study Commission (Chapter 479 of the 1966 Acts) for a more comprehensive study of urban problems.

All of these studies have pointed up the problems experienced by the older cities of the Commonwealth, and while they have defined the problems that Richmond now faces, there has been no real answer advanced that would be of any substantial benefit to the City of Richmond.



The problems now being experienced by the City are acute. Richmond cannot afford the luxury of time normally consumed in regular legislative processes. Some immediate action by the General Assembly is absolutely necessary. The Assembly, by the adoption of Senate Joint Resolution 71, to some extent recognized the plight of Richmond and provided for your Commission. With you rests Richmond's real last hope.

I am advised that Senator Willey, of Richmond, has forwarded to you gentlemen a copy of "A Report to Henrico County and Chesterfield County, Virginia, dated June 12, 1967, by SUA, Incorporated", "A Plan of Government for the Richmond Region, dated January 16, 1959, prepared by the Public Administration Service", and a report prepared by the boundary expansion office of the City of Richmond, dated January, 1969. This report was prepared for the purpose of up-dating the basic statistical factors used as background for the Public Administration Services survey report referred to above. The first two reports mentioned were prepared by experts in the field of government and were free to draw their own conclusions. There is certain information contained in these reports which in our view should be emphasized.

In particular, the lack of available land for new development is the critical problem. This limits the future growth of the City and restricts new improvements to the redevelopment of existing buildings and structures.

The age and racial composition of the population of Richmond is a serious problem. The very young, the very old and the low income residents of our City create problems that are common only to central or core cities. To meet the demands and needs of these people, special educational programs must be implemented. Police, health and welfare costs to some extent are determined by the numbers of people falling within these categories. The imbalance of the population of Richmond between the rich and the poor, the educated and the uneducated, the young and the old, must be brought back into proper prospective in order that the City of Richmond be properly governed for the benefit of all of its citizens as well as the Commonwealth of Virginia.



## LAND

Exhibit No. 1 is a plate showing the gross vacant land of the City in the year 1942. At that time 36.6 per cent or 8,738 acres of the total land in the City was vacant. In 1956 the percentage of gross vacant land had been reduced to 25.6 per cent or 6,120 acres. In 1963 the percentage of gross vacant land had fallen to 16.8 per cent or 4,011 acres (City Exhibit No. 52, City of Richmond v. County of Henrico annexation proceedings).

Exhibit No. 2 is a plate showing the net vacant land in the City of Richmond in 1968. At this time the percentage of gross vacant land had been reduced to 12.6. After careful analysis this percentage was reduced to 6.4, the reduction reflecting the amount of land held for municipal use, inundated land, land with excessive topography and small and odd-shaped parcels which were not suited for development.

A comparison of these two exhibits clearly indicates the extent of the urbanization in the City of Richmond and the lack of land that can be developed for residential, commercial or industrial use within the City. As a result

of this deficiency of land within the City, extensive urbanization has taken place in the counties of Henrico and Chesterfield.

Exhibit No. 3 illustrates the urbanized areas immediately surrounding the City as of 1968. It is obvious that the future growth of the metropolitan area must come about in the joining counties.

The Richmond Regional Planning Commission substantiates this fact in a study and report made on its behalf, and shown as Exhibit No. 4.

In this plan high intensity development sectors are proposed at the major interchanges of the interstate expressway system. At these sectors on this circumferential around the central city are the proposed locations for new major industrial, commercial and residential developments of the future. The report itself admits to a minimum of change in the City portion of the region. The city's master plan of future land use is accepted and all dramatic and extensive new development is shown in the adjoining county areas.

Historically, urbanization has always been influenced by the present modes of transportation. Future urban growth



in the Richmond area will be influenced by the expressway system and since there is practically no vacant land in the city, it is easily understood that new growth will locate at these readily accessible locations at the edge of present development. This regional development plan recommends that this new growth be concentrated at the five major development sectors, and that utilities and services should be provided to those locations to encourage their development.

## POPULATION

In the above discussion concerning the land available for development in the City and the development of the land just outside the boundaries of the City, we have pointed out that no substantial future growth is possible within the present boundaries of the City. This particular fact is emphasized by the loss of population and the change of the character of the citizens living in Richmond.

Exhibit No. 5 shows that between 1950 and 1960 Richmond's population decreased 5%, while during the same period of time, the population of the counties of Henrico and Chesterfield increased 93%. Between 1960 and 1968, Richmond continued to lose citizens at the rate of 2%, while the population of Henrico and Chesterfield increased 44%.

Exhibit 6 illustrates the impact of Richmond's population loss between 1950-1960. This exhibit is for the purpose of showing the loss in age bracket of people that are interested in government and able to participate in government in all of its aspects. You will note that a vast majority of the population loss in the City is between the ages of 24 and 50. These people are also the most productive citizens. You will note also that



while losing this productive group of white citizens, the City's population was increased in every age bracket on the Negro side. The more significant gains being in children between the ages of 19 and below. Therefore the City is losing the more active citizen and gaining more inactive citizens. The gain, of course, in the Negro population for the most part who are the disadvantaged which accounts for the vast increase in the cost of government. A careful analysis of this exhibit shows that between 1950-60 Richmond lost 30,000 white citizens and gained 20,000 non-white citizens.

Please refer to Exhibit No. 7 which shows the comparison by age groups of the citizens living within the City of Richmond and within the metropolitan area which consists of Richmond, Chesterfield and Henrico. You will note that the solid line shows in thousands the number of white and non-white citizens living within Richmond. Here again, you see that there are more non-white than white children living within the City. You also will note that Richmond has within its boundaries considerably fewer persons between the ages of 24 and 50, which we have noted to be the most productive persons. To say the least, this

exhibit shows an imbalance of Richmond's population according to age as compared to that in the metropolitan area.

As a further illustration of the composition of Richmond's citizens, Exhibit No. 8 has been prepared to illustrate the percentage of persons living within Richmond, Chesterfield, and Henrico with incomes of less than $3,000 which has been considered to be the poverty level. Of all families living within the Richmond metropolitan area in 1960 having an annual income of less than this level, 76% lived in Richmond, 10% in Chesterfield County and 14% in Henrico.



## WELFARE COSTS

With such a high percentage of disadvantaged families living in the City, Welfare costs obviously increases.

Exhibit "9" shows the increase in costs of foster care and aid to dependent children between 1960 and 1967.

In 1960, there were 5,492 persons receiving aid in these two categories at a cost of $2,012,151.00. In seven years, the number increased 95% to 10,743, costing $6,852,350 or an increased cost in seven years of 241%.

The 10,743 persons in these two categories, receiving assistance from the City, represents more than the number of people living in each of twenty-seven(27) counties of our state.

In all categories of assistance, there are 17,845 persons receiving some type of public assistance from our Welfare Department. This number of persons represents more than the number of people living in each of fifty-one (51) counties of our state.

The welfare costs of the City of Richmond increased between 1950 and 1960 123 per cent, between 1960 and 1966 it increased 108 per cent, between 1966 and 1967 the increase was 18 per cent, and between 1967 and 1968 the City's welfare budget increased from $13,500,000 to $16,524,000, or 22 per cent (see Exhibit No. 10). This, of course, is due to the fact that Richmond has more than the normal percentage of disadvantaged persons for whom the City must provide the necessities of life.



## SCHOOLS

While the population of the City of Richmond is now 55 per cent non-white, as shown on Exhibit 11, its school membership is 68 per cent non-white. Because of this fact the cost of providing educational facilities and instructional personnel has increased accordingly. For the school year 1950-51 the per pupil cost in ADA was $213.23. At this time the non-white school membership was 41 per cent of the total enrollment. In 1960 the non-white school membership increased to 56 per cent and the per pupil cost in ADA had risen to $338.77. In 1967 the cost per pupil in ADA had climed to $587.00. It is true that some of this cost is reflected in increased cost of living, but a greater percentage of this cost can be found in the fact that the non-white students are disadvantaged, and in an effort to provide them with the type of education necessary, special educational programs have had to be developed. As a matter of interest, for the school year 1950-51 the total operating expenses of the Richmond School System was $6,147,026.92. For the school year 1967-68 the cost had increased to

$23,321,732.59. In an effort to provide technical training for the disadvantaged, the City of Richmond constructed, and has opened, the Richmond Technical Center at a cost of $5,526.927.95. This school is designed and equipped to provide training for those disadvantaged persons that are not capable of assimilating the normal type education. At the present time this is truly a regional school. There are students now attending this school from Henrico, Chesterfield, Goochland and Hanover counties as well as the City of Richmond.



## POLICE PROTECTION

As indicated above expenditures for police protection have increased along with the other services being provided by the City.

Exhibit No. 12 shows that this cost has increased between 1940 and 1950 - 97%, between 1950 and 1960 - 112%, between 1960 and 1967 - 61%.

The cost for the year 1966-1967 was approximately $3,800,000.

## REAL ESTATE AS A REVENUE BASE

### Comparison of Real Estate Values

We have previously noted the rapid development of real estate in the areas of the counties surrounding the City of Richmond. Ten years ago (1958) 58 per cent of the true value of real estate in the metropolitan area was located within the City of Richmond. This is shown on Exhibit No. 13. Now 59 per cent of the true value of all real estate is located within the counties of Henrico and Chesterfield, and only 41 per cent in the City of Richmond, despite the tremendous redevelopment that has occurred in Richmond, particularly in the Central Business District.

### Non Taxable Real Estate

As in most communities, real estate bears the biggest burden in producing revenue for the operation of government. Richmond has the dubious honor of having the highest tax rate in the State of Virginia ($1.59). Richmond's real



estate produces 43 per cent of all local revenue. Between 1955 and 1968 the non-taxable real estate increased 222 per cent, while during the same time taxable real estate increased only 68 per cent (see Exhibit No. 14). Of all real estate located in the City 26.1 per cent is tax exempt. The burden carried by real estate cannot be equitably increased. In the City there are 38,549 parcels of land classified as single-family housing out of a total number 56,105. Of the 38,549 taxable parcels classified as single-family there are 13,000 with an assessed value of less than $5,000 and there are 15,000 that have an assessed value between $5,000 and $10,000. This is to say that out of 38,000 single-family homes 27,000 are assessed at less than $10,000.

For comparison of trends in per capita real estate value for Richmond, Henrico and Chesterfield see Exhibit No. 15.

## RICHMOND'S EFFORTS TO SOLVE ITS BOUNDARY PROBLEMS

### Merger Effort With Henrico

For at least a decade, the various Councils of the City of Richmond have recognized the necessity of the City to expand its boundaries. The first real definitive step taken by the Council was on August 15, 1960, which provided for a commission to prepare a joint agreement for the consolidation of the County of Henrico and the City of Richmond, pursuant to the merger law of the Commonwealth. This action had been preceded by similar action of the Board of Supervisors of Henrico County on July 28, 1960. The commission so appointed by the County and the City met and submitted its report on July 31, 1961. The consolidation agreement as contained in the report was approved by the Council on October 10, 1961 (Resolution No. 61-SR61-72). A referendum was held on the question of consolidation in both the County and the City on December 12, 1961. In the City of Richmond there were 15,050 votes cast for the consolidation and 6,698 against the consolidation.In Henrico County, there were 13,647 votes cast against consolidation and 8,862 for. It is interesting to note that in Tuckahoe, the county's most densely populated



magisterial district, the citizens voted for merger.

### Annexation - Henrico

With the failure of the merger, the Council on December 26, 1961, adopted Ordinance No. 61-33-287, which provided for the annexation of a portion of Henrico County. The area sought to be annexed contained 152 square miles and approximately 93,600 people.

Pursuant to the above ordinance, the City Attorney instituted the annexation proceedings on December 27, 1961. On February 1, 1962, counsel for the county files a motion for a continuance, pursuant to 30-5 of the code. The county being represented by counsel who was a member of the General Assembly, the motion was granted and the case continued to May 10, 1962.

After a series of other court proceedings, King v. Hening, 203 Va. 582, which involved a writ of prohibition, this matter was decided on June 11, 1962. On August 3, 1962, a motion was filed to dismiss the proceedings, which motion was denied by the trial court. The County next sought a Writ of Prohibition in the Supreme Court of Appeals, which was denied by the Court

of Appeals in Henrico County v. Hening, 203 Va. 111, December 2, 1962. The County next filed a Demurrer and Motion to Dismiss, which was overruled by order of the Court dated January 4, 1963.

On June 14, 1963, the case actually began on its merits. The evidence was heard over a period of 28 days during which approximately 414 exhibits were received in evidence. The final transcript of the record totaling exactly 6,000 pages. The Court on April 27, 1964, in a written opinion, stated in part as follows:

I The City's Need For Additional Territory.

"The testimony of the witnesses and the exhibits on the subjects of population increase in the areas under consideration, the density of population, the increase in housing units, the mobile and rapid spreading nature of the population correlate with and explain the testimony of other witnesses and their supporting exhibits on the need of the City for additional land for residential, commercial and industrial development."

II Community of Interests Between the City and the Area To Be Annexed.

"***Workers living in the County of Henrico and employed in the City of Richmond are bound by the necessity of loyalty,



good citizenship and plain economics of living to be interested in the community in which they work. Both City Exhibits 54 and 55 and County Exhibit 116 agree and prove that approximately 66% of the County residents have their employment in the City of Richmond. This rate of employment is higher in the fringe areas in varying percentages according to the exhibits. County inhabitants purchase clothing and furniture and other items at city stores, use city streets, use hospitals located in the city, attend theaters and sports events, make use of parks, libraries and restaurants located in the city. Dependence of the central City of Richmond and the immediately surrounding county is mutual. The evidence shows that the commercial and civic interests of the city and county are largely identical."

III The Need For Governmental Services in Area Sought To Be Annexed.

"Although Henrico County is well governed under the County Manager form of government and supplies its citizens with many essential services pursuant to the provisions of Section 15-10 of the Code and the Sanitary District Act, it is dependent upon the City to a large extent for water, gas and sewer services."

IV Financial Ability of the City to Annex.

"The financial ability of the City to acquire by annexation a portion of the County is apparent from the evidence. The City enjoys a AAA bond rating which is indicative of its high financial rating. Its budget is sufficiently balanced and it is capable of taking care of the needs of its citizens as well as any reasonably adjacent area which the Court may decree annexed.

"***It Further appears from the evidence in this case that the City has an adequately organized and progressive government and that it is conscious of the needs of the area."

Even though the Court was of the opinion that there was a community of interest between Henrico and Richmond, it did not award Richmond but 16.16 square miles (10,340 acres) and 45,310 people. For this amount of land, the City was ordered to pay the County $41,435,000 and to spend $13,490,000 within five (5) years on capital improvements for the area awarded. The Council considered the award and cost was not in the best interest of the citizens and did not accept the same.





At the same time, the Council authorized the annexation of a portion of Henrico County, as discussed above, by the adoption of Ordinance No. 61-334-288, it authorized the annexation of a portion of Chesterfield County. This suit was instituted on January 2, 1963, and the City sought to annex fifty-one (51) square miles of the County which then contained approximately 40,000 people.According to a recent population study, the area now contains approximately 72,000 people.

After considerable time and effort in Court and within five (5) court days remaining, the Honorable David Meade White, the "local" or presiding Judge on January 9, 1969, disqualified himself from further service on the Court and declared a mistrial.

Because of this action by the Judge, it is necessary that a new Court be constituted and the matter be heard de novo.

## CONCLUSION

In addition to what has been said, much more could be said. What we have attempted to do is to share with this Commission the history of the problem of expanding the boundaries of the City as portrayed by the various acts of the Assembly. We have pointed out certain areas which portray the plight of the City of Richmond and the necessity for its boundaries to be expanded immediately. We have also illustrated the efforts of the City through a merger and two annexation cases within the last ten years to solve its problems of boundary expansion within the framework of existing law. In this the City has been unsuccessful. The necessity for the expansion of the boundaries of the City is so acute, so urgent and so imperative that the City must receive extensive relief from the General Assembly now. It is within the power of this Commission to recommend appropriate legislation to the Special Session which will convene shortly which would provide for the expansion of the City's boundaries. I trust that this will be your conclusion.

Respectfully submitted,

C. B. Mattox

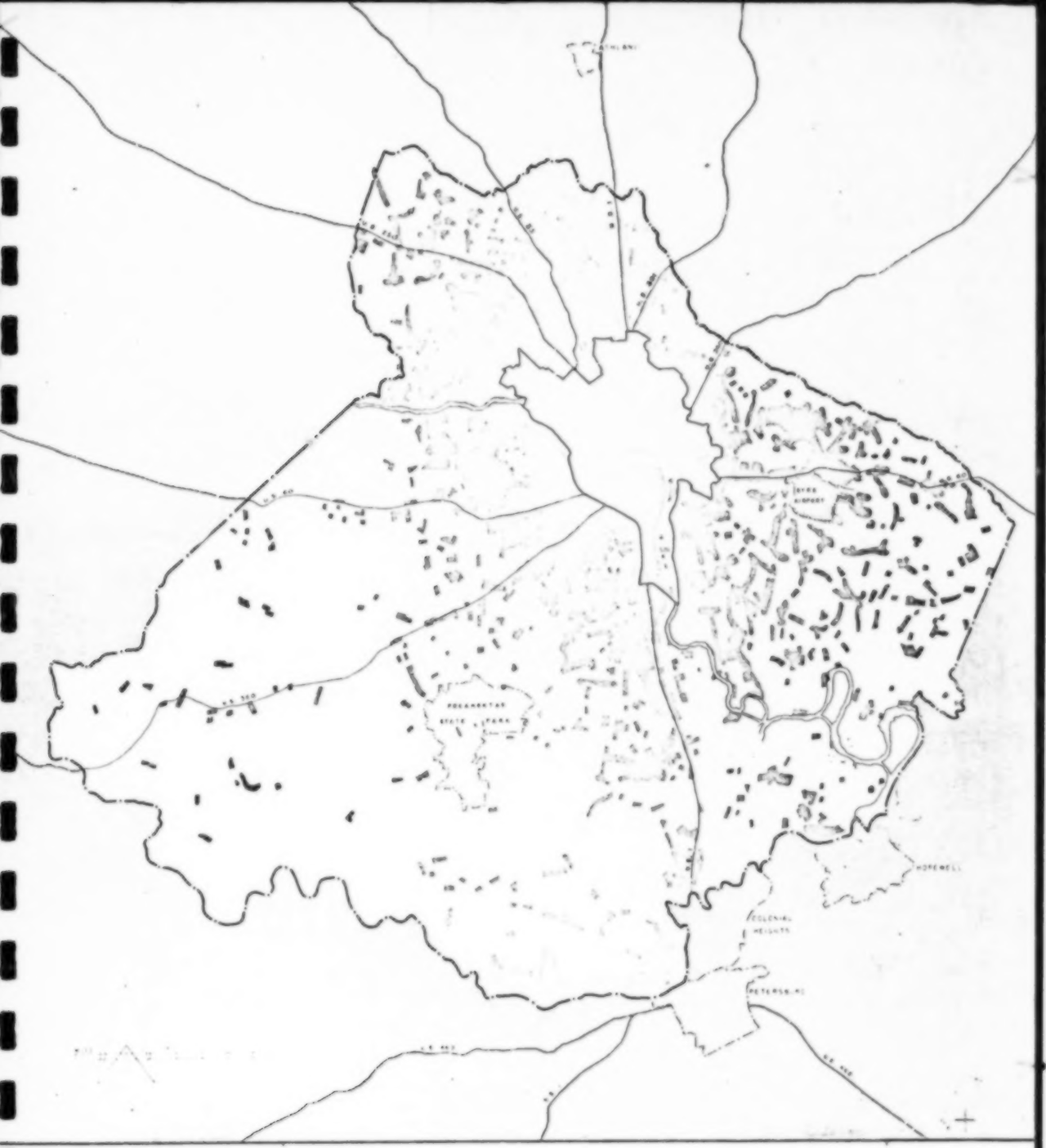
C. B. Mattox, Jr.
City Attorney, City of Richmond

GROSS VACANT LAND 1942
CITY OF RICHMOND

EXIBIT 1

NET VACANT LAND 1968
CITY OF RICHMOND

EXIBIT 2

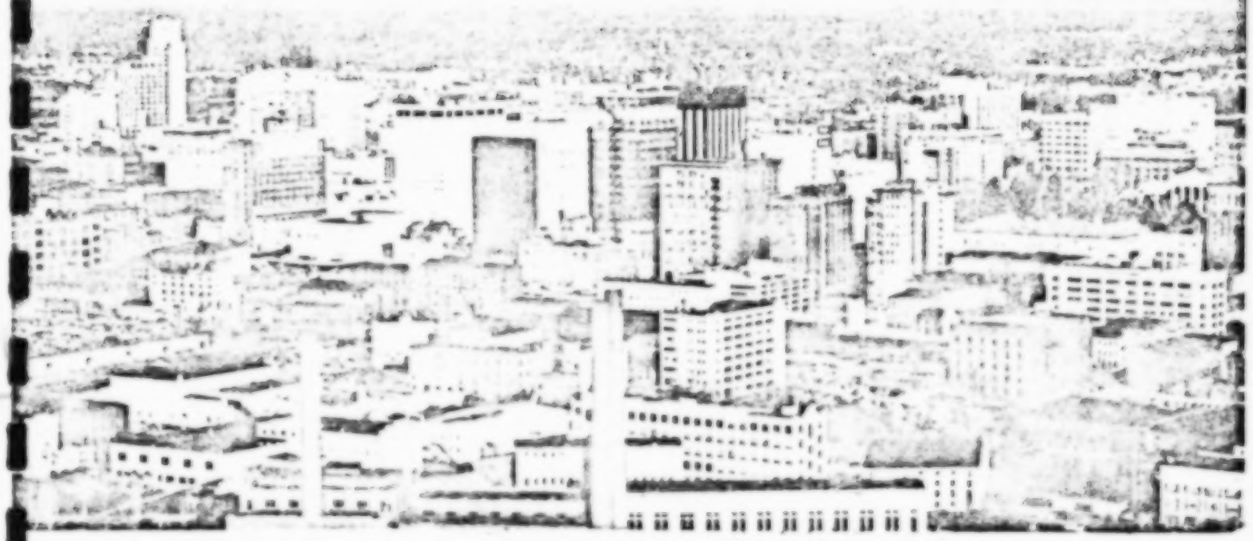


EXTENT OF URBANIZATION
1968

EXHIBIT 3

EXHIBIT NO. 4

# THE RICHMOND REGIONAL DEVELOPMENT PLAN



This brochure summarizes the major recommendations of the Richmond Regional Planning Commission's proposed 1980 Development Plan for the Richmond Region. The Richmond Region, which consists of the City of Richmond and Chesterfield and Henrico counties, is expected to increase from 475,000 people in 1967 to over 600,000 people by 1980. The Regional Development Plan is intended to guide the orderly physical growth of the Region.

The full report on the Richmond Regional Development Plan is available from the Commission.

## BACKGROUND FOR THE PLAN

### The Regional Planning Process

The regional planning process recommended for the Richmond Region is a cooperative effort among responsible officials to deal rationally with *regional* issues. These issues include (1) development of major land uses such as shopping centers, employment centers and apartment complexes; (2) regional open space; (3) the major thoroughfare network; and (4) major sewer and water utilities programs.

Thus, the Plan emphasizes the broad structure of the Region and deals with policies, objectives and standards rather than the detailed allocations of a local plan. It attempts to differentiate between policy or strategic decisions on the one hand and small-scale or tactical decisions on the other. The main objectives form the basis for more specific county and city plans which can and should be prepared.

*Maximum choice* is recommended as the basic planning approach for the Richmond Region. This approach is distinguished as *process-oriented* rather than *product-oriented*. Most land use plans are product oriented. They propose a mapped regional form which represents a desired end-state for a certain time period. They rely heavily on non-existent governmental ability to provide sufficient guidance and control to achieve that end-state.

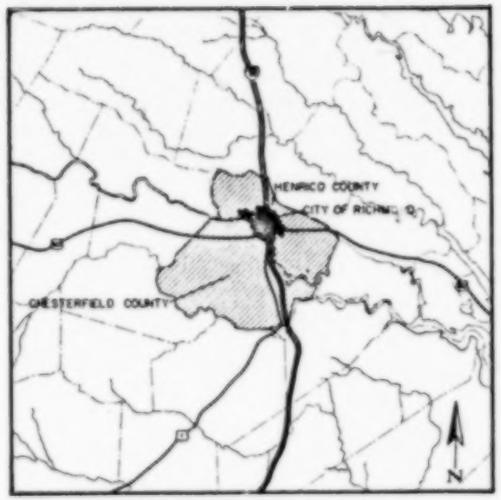
The *maximum choice* approach is more realistic. It recognizes a limited governmental capacity to channel growth. It is more strategic in that it provides a structuring for major regional development that (1) can be agreed upon by local policy makers, (2) is sensitive to private market needs, and (3) can be implemented with existing or likely public powers and private means. The goal of the *maximum choice* approach to metropolitan planning is guiding the actual *development process* rather than portraying a future, static physical map and form of the Region. It is intended to promote a wide range of well-planned living, working, shopping, and cultural environments within the Region.

### Analysis for the Plan

In developing the Plan, the following factors were considered:

1. Interviews with business, government, professional, and civic leaders. Attitudes and assumptions about regional development were discussed.
2. Existing land use. New development must complement existing land use.
3. Programmed public improvements. These include programmed and proposed major water and sewer line extensions and regional thoroughfares which will influence regional growth over the next 15 years.
4. Current development trends. An analysis of where new subdivisions and apartments, and commercial and industrial growth, are likely to occur over the next five years identifies areas of major development pressures.
5. New innovations in planning and zoning.

The locational needs of major regional uses were also analyzed. These uses include shopping




## THE RICHMOND REGION

centers, multifamily residential uses, and industrial concerns. They are termed high intensity uses. The *dominant need* of these uses is highway access. Because of increased reliance on the automobile and trucking, high intensity uses desire locations near high-speed routes. Access to high-speed routes is greatest at interchanges and along major regional thoroughfares. It is expected that strong regional development pressures will occur near these points.

### Recommended Development Policies

The Plan is based on a series of recommended development policies for the Richmond Region, which in turn stem from the above analyses. The policies, thus, represent what is both desirable *and* feasible for Richmond regional development. They are designed to provide a clear and consistent framework for the Regional Development Plan and for programs designed to implement the Plan. The policies, which provide a *direct basis* for public and private action, are formulated for land uses: housing, industry, commerce and open space; and for public improvements: transportation, sewer, and water facilities.

## THE REGIONAL DEVELOPMENT PLAN

The Development Plan for the Richmond Region consists of four interrelated documents, described below:

The Major Thoroughfare Plan, shown on the Future Land Use Plan, proposes a circulation system for the movement of people and goods in the Richmond Region. The Major Thoroughfare Plan is based primarily on proposals of the Virginia Highway Department in its forthcoming 1980 Major Thoroughfare Plan for the Region. Additional recommendations for parkway development are made by the Commission's consultant. Proposed and programmed expressways include (1) Interstate 295 and the Chesterfield Outer Beltway, forming a complete loop in the outer portions of the Richmond Region, and (2) the Richmond Expressway System. Proposed and programmed major regional thoroughfares include Parham Road and Laburnum Avenue in Henrico County and Chippenham Parkway and Courthouse Road in Chesterfield County.

The Future Land Use Plan identifies the location, character and intensity of future metropolitan development. A balanced distribution of five multi-purpose centers is proposed for the Region at interchanges of expressways and major regional thoroughfares. The centers are designed for regional shopping uses, multifamily uses, offices, and light industrial development. The Plan also proposes community activity centers for local shopping centers and office development and

garden apartments along segments of major regional thoroughfare corridors. Areas for single family residential uses, light and heavy industrial uses, and highway commercial uses are designated.

The Open Space and Recreation Plan, which forms a part of the Future Land Use Plan, emphasizes the Region's need to conserve its irreplaceable resources and develop large recreation areas. The Open Space Plan proposes conservation areas in places of scenic, ecological, and historic importance along the Region's major rivers and streams. These include the James River, the programmed Sutherland Lake Reservoir on the Appomattox River, the Chickahominy River bottom, and smaller streams within the Richmond Region. Five potential sites for regional park development are shown. Four are designated within conservation areas: two along the James River, one on the Chickahominy and one on the Sutherland Reservoir. The fifth is the expansion of Pocahontas State Park. The Plan proposes three parkways designed to link regional parks and enhance the experience of driving. These are the James River Parkway and Battlefields Parkway in Henrico County and the Chesterfield Scenic Parkway.

The Zoning Policies Plan specifies zoning guidelines for individual elements of the Future Land Use Plan and Open Space and Recreation Plan. It indicates to each jurisdiction a proposed regional policy to be followed regarding zoning and zoning map amendments.

Two kinds of basic development units are designated on the Zoning Policies Plan: sectors and zones. Sectors are geographically defined areas in which it is recommended, as a matter of metropolitan policy, that the local jurisdictions permit rezoning for a variety of uses in conformance with development objectives. Mapped zones, on the other hand, fix development locations for similar types of uses.

1. **High Intensity Development Sectors**
   There are two types of high intensity development sectors shown on the Zoning Policies Plan. The interchange development sectors correspond to the regional multipurpose centers proposed on the Future Land Use Plan. The corridor development sectors are coterminous with the community activity centers proposed on the Future Land Use Plan. Each interchange development sector is a 2,000 acre area within one mile radius of the intersection of an expressway and a major regional thoroughfare. Each corridor development sector is contained within 800 feet of basically undeveloped segments of major regional thoroughfares which provide high accessibility to urbanizing portions of the Region.

   Within the sectors, current zoning would continue to apply. For the most part, it is agricultural (low density) zoning. However, developers of high intensity uses would be permitted to apply to the Boards of Supervisors for rezoning anywhere within the sector. The rezoning would be granted provided certain development criteria are satisfied. These criteria are intended to assure orderly, well-planned development and would require the developer to demonstrate:
   a. Compatibility with existing land use.
   b. Accessibility to major regional thoroughfares capable of bearing the traffic volumes and turning movements generated.
   c. Provision of adequate public sewer and water service.
   d. A market demand for the proposed development to help insure that the development can be completed as proposed.

In addition, site plan review would be exercised by the local governments to assure a safe and orderly project design, and a time limit on rezoning is also proposed to reduce speculation.

It is proposed that recommended development regulations for sectors be incorporated into local zoning ordinances and that sectors be actually mapped and opened for rezoning applications approximately three years before the completion of the interchange or major thoroughfare on which the sector designation depends. This would give developers time to prepare plans and initiate construction. At the same time, public officials should act to stimulate a concentration of regional uses in the development sectors. They would do this through the advanced planning and provision of public facilities for the sectors.

The use of sectors is intended to improve public and private decisions on the step-by-step *process of development* through the use of explicit location and site development criteria rather than an inflexible land use plan. In a largely undeveloped region it is unrealistic to plan and zone a limited area for one type of development, such as light industry, when a site may be appropriate for, and desired by, developers of other uses. Zoning of undeveloped land also has the effect of giving a monopoly to relatively few landowners. Pressures for rezoning become inevitable, and ordinarily there are few standards for rationally evaluating rezoning requests.

There are other advantages in the use of sectors. First, since they are located in areas where it is anticipated that there will be pressures for high intensity development, the economic potential of the land will be realized. Secondly, within the sectors private investors have a wide range of site choices and ample land for building large-scale, preplanned development. Thirdly, because rezoning for major regional development will be permitted only in interchange and corridor sectors, residential areas are protected from encroachment by high intensity uses.

2. **Low Intensity Development Sectors**
   The three low intensity development sectors on the Zoning Policies Plan correspond to the moderate, low, and rural residential uses on the Future Land Use Plan. In these sectors rezoning would be allowed primarily for single family residential uses.

3. **Conservation Sectors**
   Conservation sectors conform to conservation areas proposed on the Future Land Use Plan. They are defined largely on the basis of topography, ecological characteristics and existing land use. It is proposed that techniques such as acquisition, scenic easements, tax deferrals and abatements, and flood plain zoning be utilized in these areas over time in order to preserve their natural character. Rezoning would be permitted as appropriate for private recreational uses.

4. **Zones**
   For certain areas suitable for one type of development, the use of mapped zones is recommended. These areas include, for example, a portion of Chesterfield County between the Richmond-Petersburg Turnpike and the James River as indicated on the Future Land Use Plan. Highly suitable areas for zoning for light industrial and highway commercial uses on the Zoning Policies Plan conform to those proposed on the Future Land Use Plan.

The Zoning Policies Plan provides guidelines to zoning for anticipated new development within the Region. However, it does not preclude the modest extensions to existing zoned areas within localities which would be undertaken by the counties on the basis of detailed small-area planning.

ZONING POLICIES PLAN

HIGH INTENSITY DEVELOPMENT SECTOR

- INTERCHANGE
- CORRIDOR

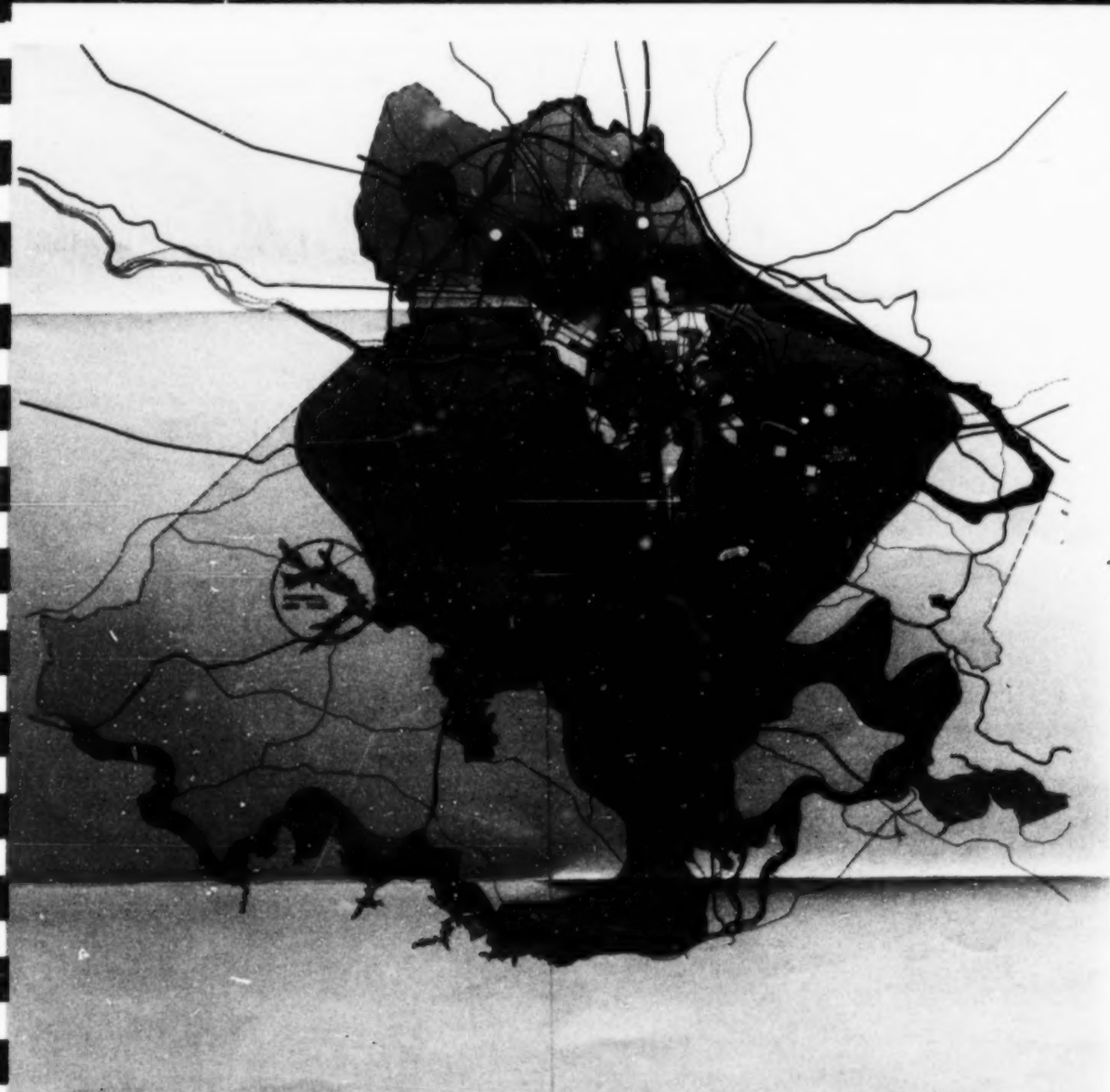
CONSERVATION SECTOR

LOW INTENSITY DEVELOPMENT SECTOR

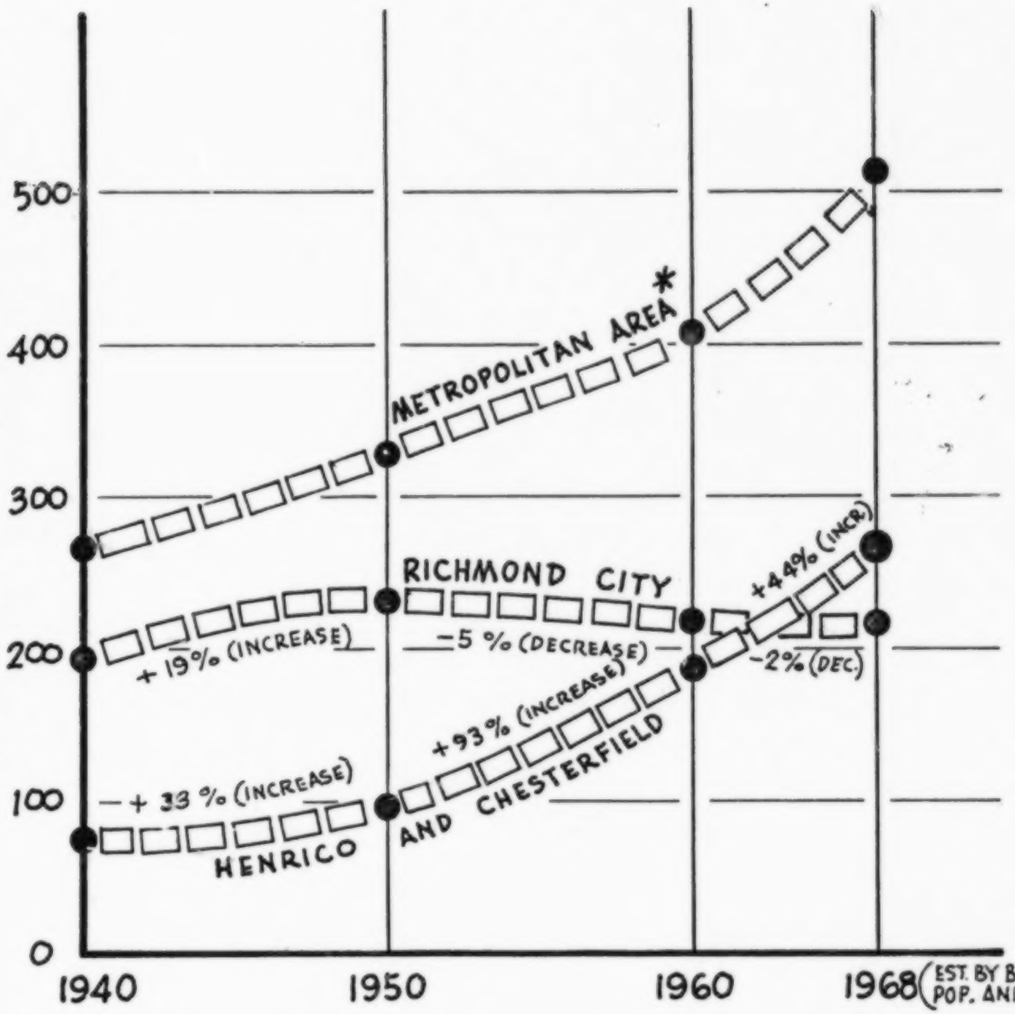
- MODERATE DENSITY RESIDENTIAL
- LOW DENSITY RESIDENTIAL
- RURAL DENSITY RESIDENTIAL

ZONE

- HEAVY INDUSTRY
- LIGHT INDUSTRY
- HIGHWAY COMMERCIAL



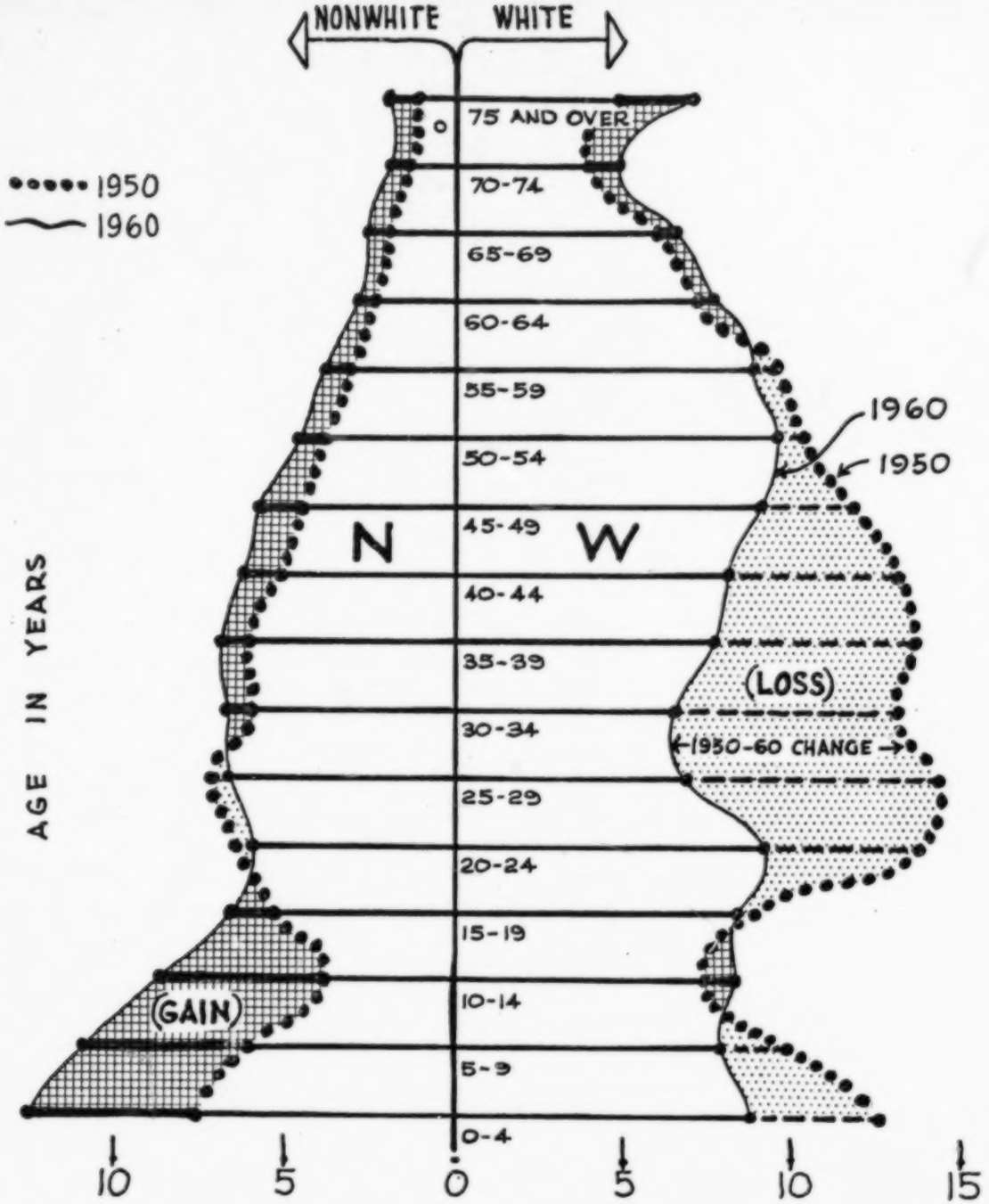
FUTURE REGIONAL LAND USE PLAN




* INCLUDES RICHMOND CITY, HENRICO COUNTY & CHESTERFIELD COUNTY

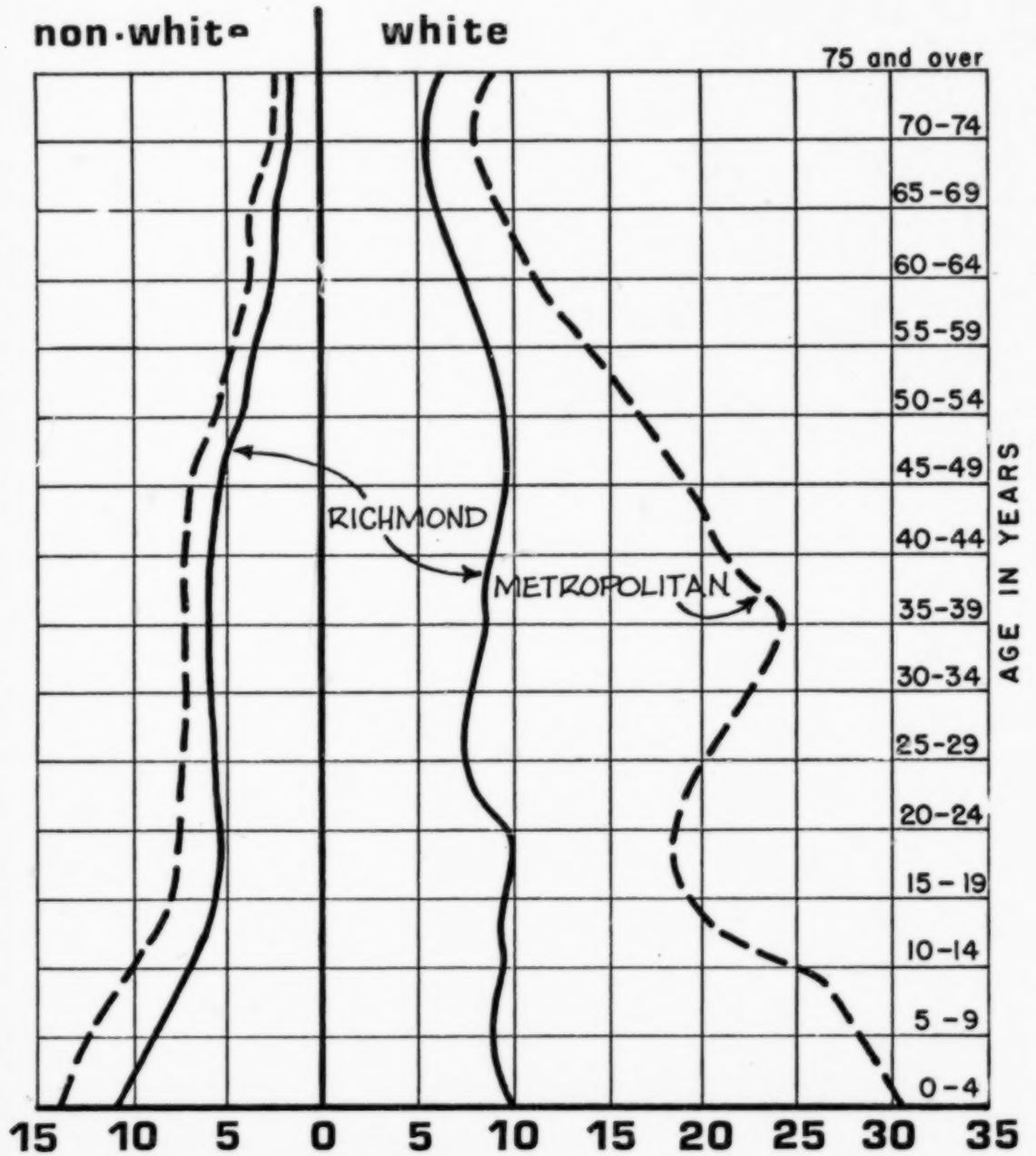
# COUNTY/CITY POPULATION TRENDS

EXHIBIT 5.




# IMPACT OF RICHMOND'S POPULATION LOSS 1950-1960

EXHIBIT 6.




POPULATION COMPOSITION AGE & RACE

**1960**

RICHMOND & METROPOLITAN*

*CHESTERFIELD & HENRICO

EXHIBIT 7.

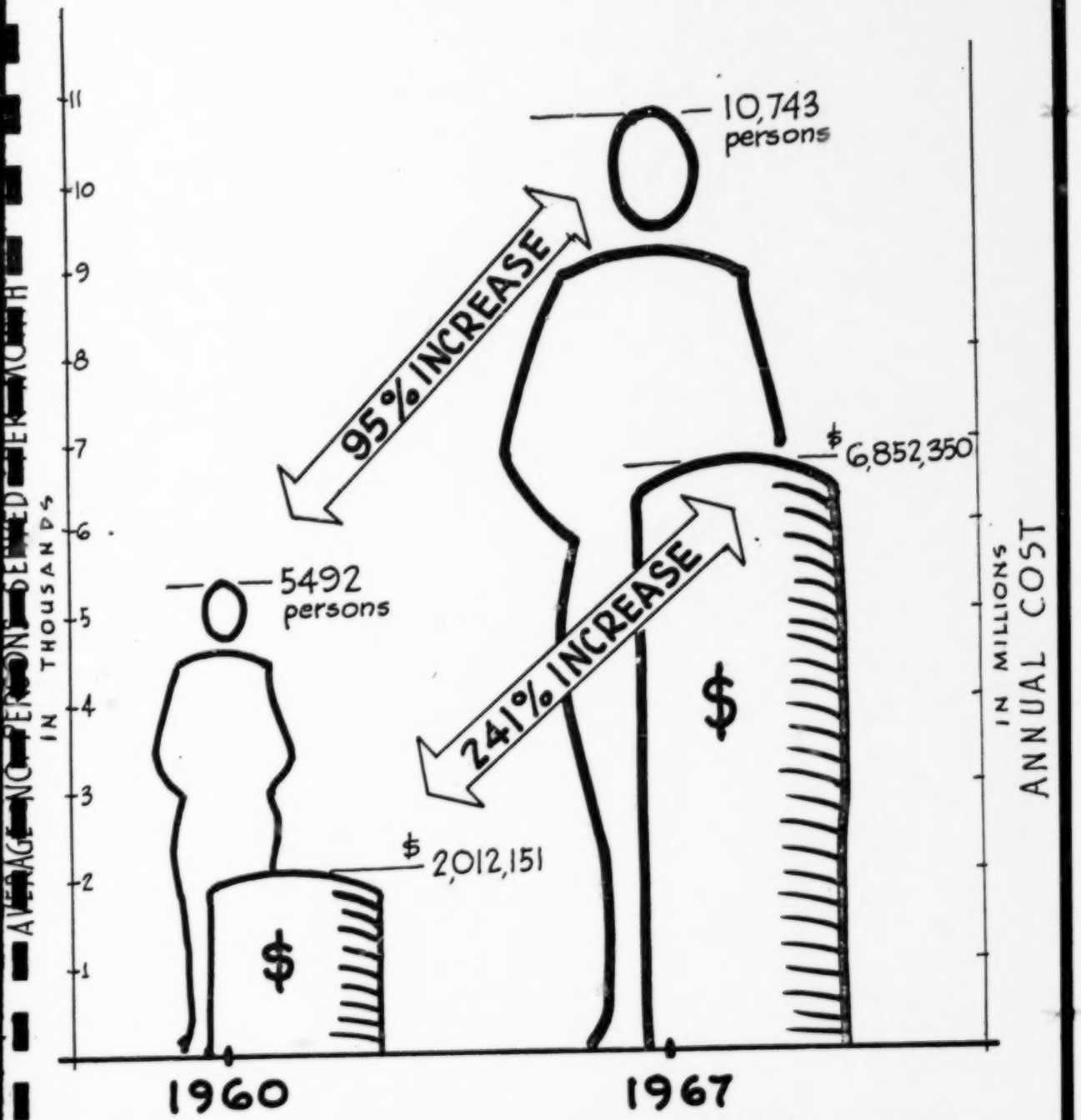
PERCENTAGE OF FAMILIES IN METROPOLITAN AREA WITH INCOMES LESS THAN $3,000 IN 1960 LIVING IN

RICHMOND 76%.

CHESTERFIELD 10%.

HENRICO 14%.

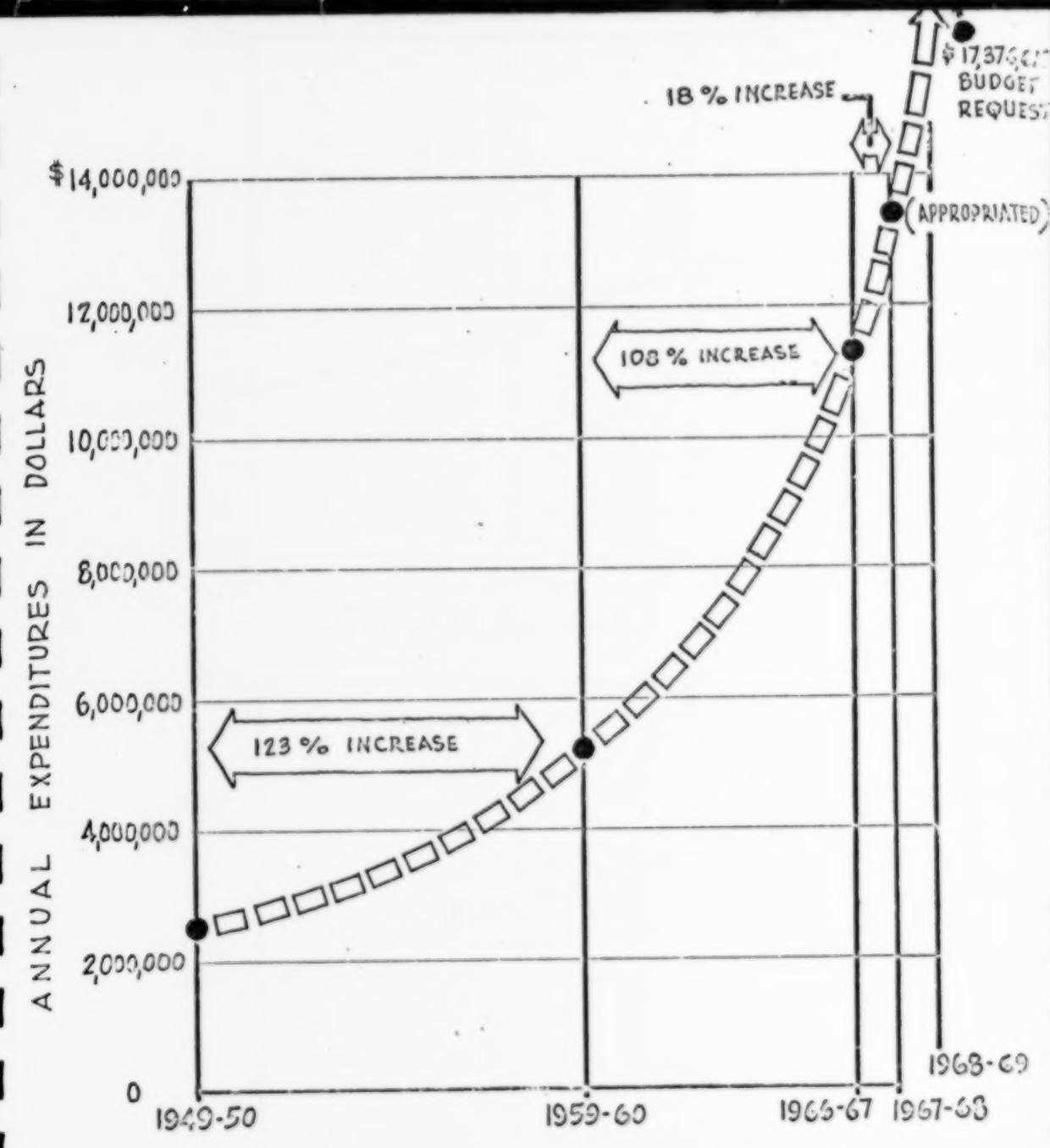
EXIBIT 8




# FOSTER CARE & AID TO DEPENDENT CHILDREN

NUMBER SERVED AND COST 1960 & 1967

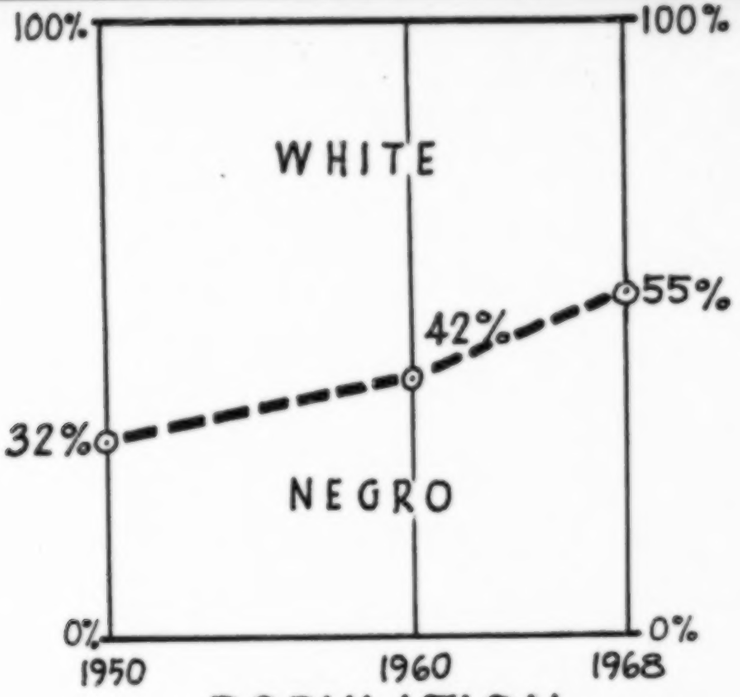
EXHIBIT 9.



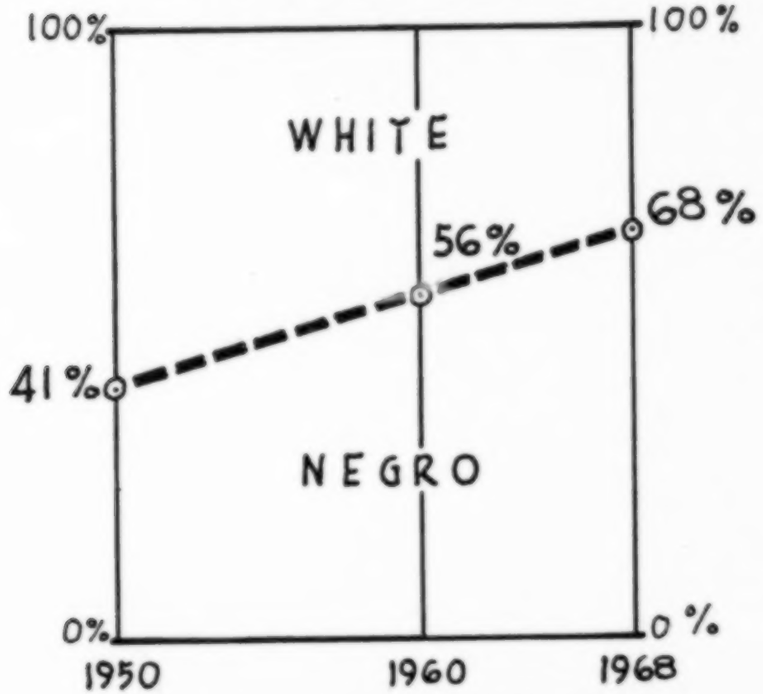

# INCREASE IN WELFARE COSTS

CITY OF RICHMOND 1950-1968

EXHIBIT 12.

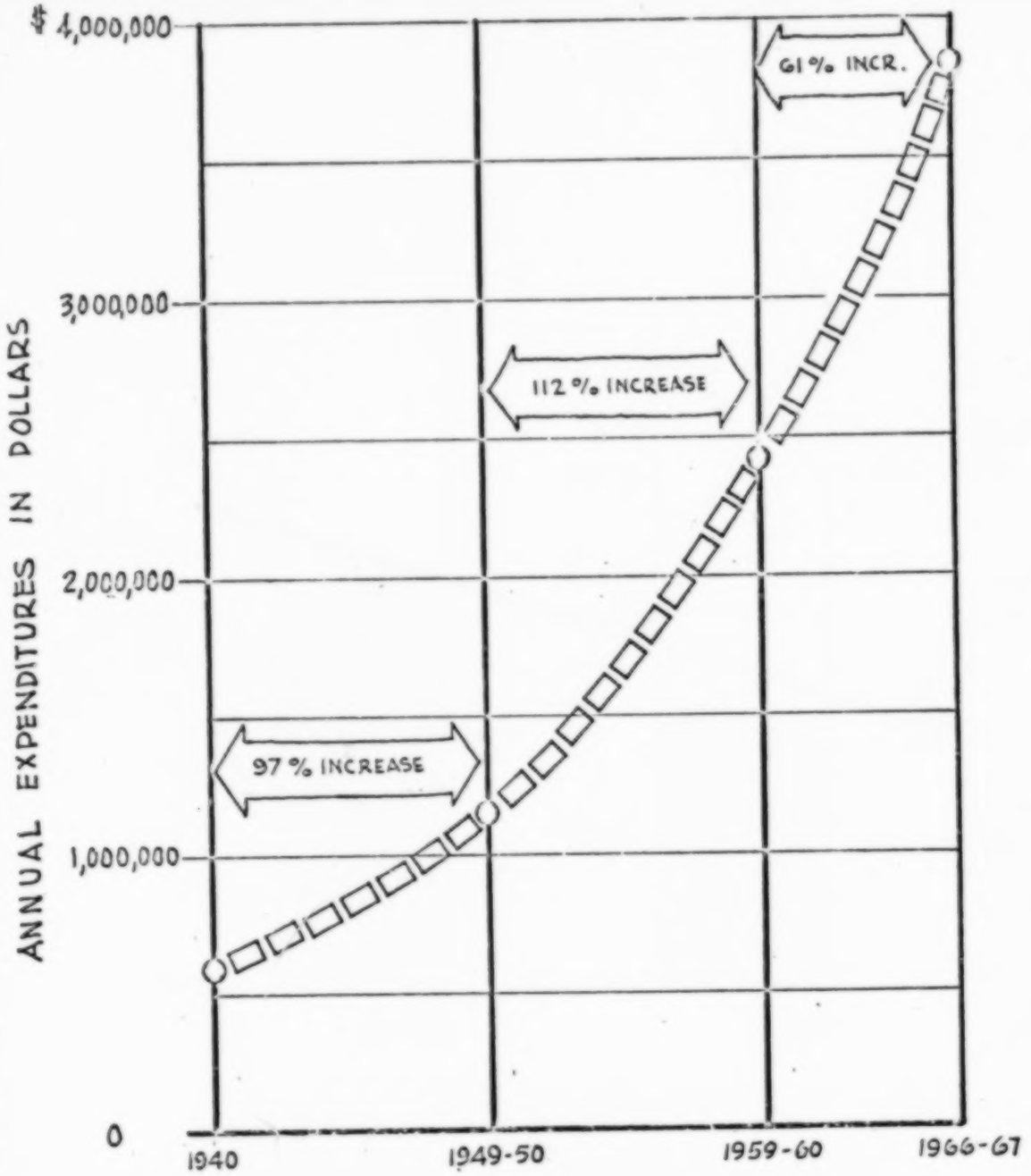



POPULATION




SCHOOL MEMBERSHIP

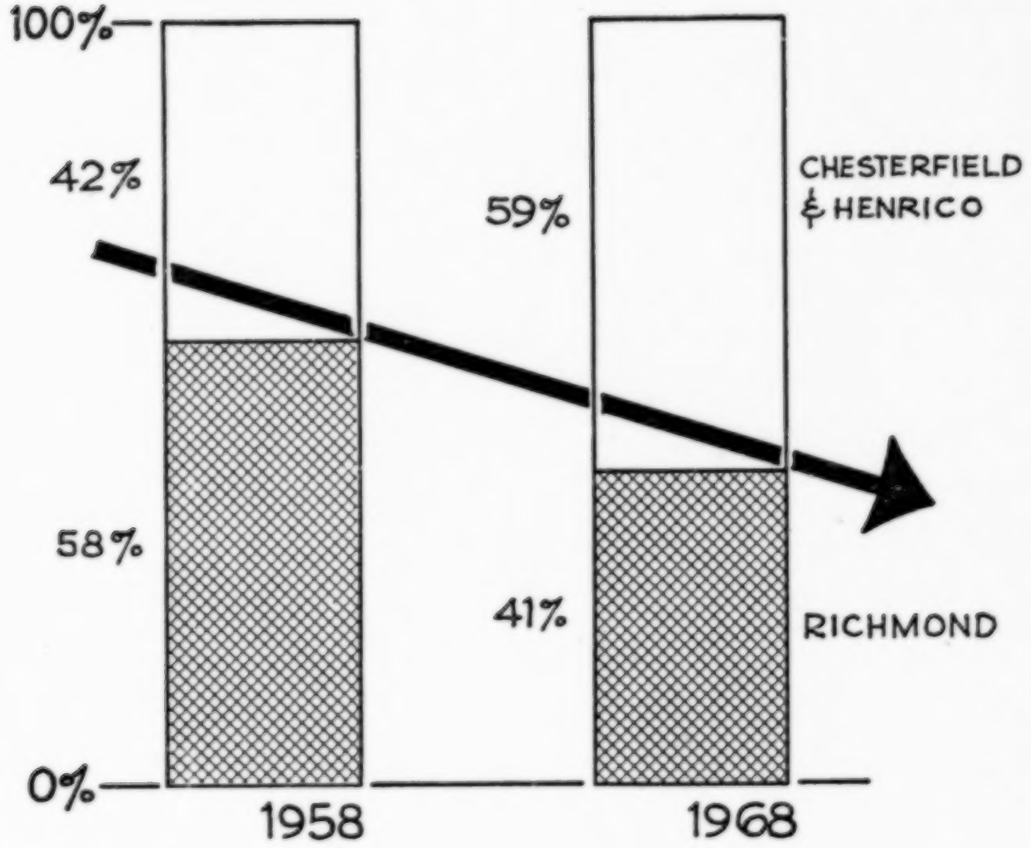
EXHIBIT 11.




EXPENDITURES FOR POLICE PROTECTION

CITY OF RICHMOND

EXHIBIT 12




TREND IN PERCENTAGE OF

## REAL ESTATE VALUE *

IN RICHMOND & ADJACENT COUNTIES

* fair market value.

EXHIBIT 13

## INCREASE IN NON-TAXABLE REAL ESTATE IN RICHMOND

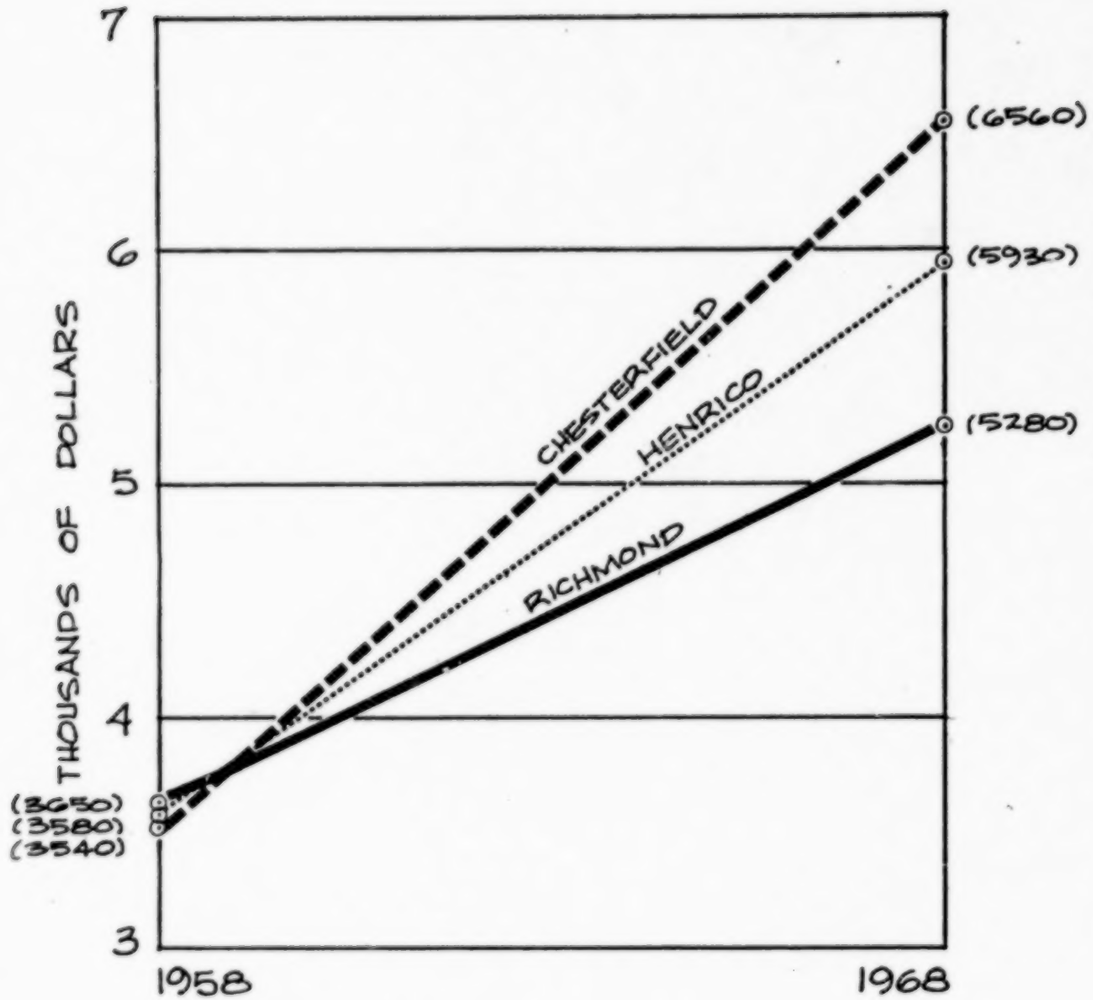
TAXABLE
1955-1968

68%

NON-TAXABLE

222%

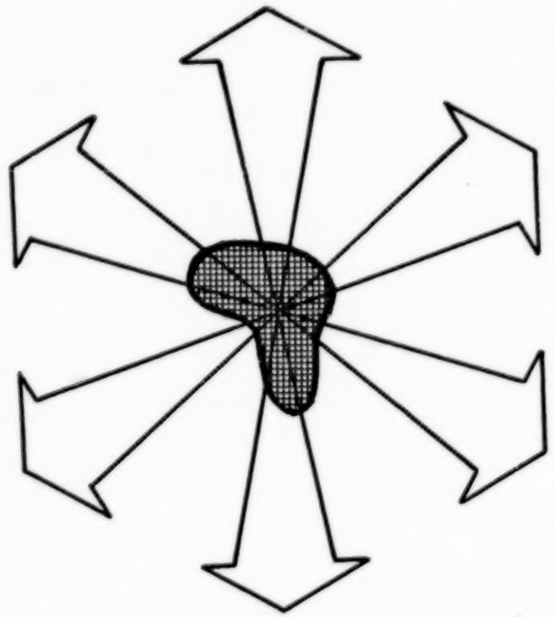
EXIBIT 14




COMPARISON OF
PER CAPITA REAL ESTATE VALUE TRENDS
FOR RICHMOND • HENRICO • CHESTERFIELD

EXIBIT 15

# EXPAND



# RICHMOND BOUNDARIES

City of Richmond
Report to the
Richmond Boundary Expansion
Study Commission

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FOREWORD

This report is addressed to the plight of the City of Richmond in its attempt to expand its boundaries.

Richmond's dilemma was brought to the attention of the General Assembly in its 1968 Session. As a result of Senate Joint Resolution No. 71, the Richmond Boundary Study Commission was formed.

"Richmond" as it is known by many throughout the Commonwealth and the nation is composed of the City of Richmond and parts of the Counties of Henrico and Chesterfield.

The gerrymandering of the City's boundaries is so irregular and complex that it often confuses even veteran service personnel of all jurisdictions.

The City and the counties have a joint heritage. Henrico was first formed as a Shire in 1634, in 1742 Richmond was formed as a town from a section of the county by the General Assembly. In 1749 Chesterfield County was formed from Henrico County in that portion west and south of the James River.

There are common interests shared by the residents of the whole area, as well as a common basic economy.

## LEGISLATION AND PURPOSE

A lot has been said about the plight of the central city, and over the past several years the General Assembly of Virginia has addressed itself to this problem in varying ways.

In 1950 House Joint Resolution No. 31 provided for the appointment of a commission to study urban growth with the enumerated responsibility of recommending changes in the fundamental policy of the State, as will "aid in the harmonious integration of the contagious urban area". The commission proposed modifications to the annexation procedure "to permit the readjustment of boundaries of the counties, cities and towns under conditions which will, in so far as possible, do justice to all parties * * *." Adjustment of Boundaries of Virginia Municipalities and Adjacent Counties, at page 21.

In 1956, House Joint Resolution No. 46 instructed the Virginia Advisory Legislative Council to study the feasibility of consolidating local government units. This study recognized the desirability of reducing the number of units of local government by combining those political subdivisions which have mutual problems and interests. Consolidation of Local Governments and Services, at page 7.

In 1962 the General Assembly again requested the Virginia Advisory Legislative Council to study the laws relating to annexation and consolidation (see Chapter 265 of the 1962 Acts). The resulting report, Annexation and Consolidation, (House Document 16, 1964) indicated strong preference for consolidation rather than annexation.

In 1966 the Assembly established the Virginia Metropolitan Area Study Commission (Chapter 479 of the 1966 Acts) for a more comprehensive study of urban problems.

"The metropolitan areas has become the heart of Virginia's economy. If the impressive economic growth attained in recent years is to be sustained, the Commonwealth's urban areas must provide an environment conducive to desirable industrial and economic activity. A variety of economic, physical and social factors are involved, for the problems are increasingly complex. And yet if Virginia's citizens are to enjoy more favorable conditions in which to live and work and play, current trends must be reversed. The quality of Virginia's metropolitan areas must be dramatically improved. The State's metropolitan areas differ in the nature and severity of their particular problems. All, however, merit attention, for if solutions to the growing problems of the ultimate solution may become impossible. One has only to observe the massive problems of urban decay and suburban sprawl in other states to be wary of delay in facing up to Virginia's metropolitan problems. It is all too clear that the best thinking of all Virginians is urgently needed in an effort to find solutions". (page 8)





The Commission's recommendations that were enacted by the General Assembly provided for the division of the state into planning districts as a means of improved intergovernmental communications and cooperation. The voluntary formation of service districts as a new level of limited, regional, government was also authorized. This program for the modernizing of local government is now in progress. However, as the program is applicable State-wide, it is properly a gradual transition that will require many years for material accomplishment.

All of these studies have pointed up the problems experienced by the older cities of the Commonwealth, and while they have defined the problems that Richmond faces, there has been no real answer advanced that would be of any substantial benefit to the City of Richmond. The problems now being experienced by the City are acute. Richmond cannot afford the luxury of time normally consumed in regular legislative processes. Some immediate action by the General Assembly is absolutely necessary. The Assembly, by the adoption of Senate Joint Resolution 71, to some extent recognized the plight of Richmond and provided for your Commission. With you rests Richmond's real last hope. Richmond's plight will be discussed in later chapters of this report, but can be summarized in the statements below.

In particular, the lack of available land for new development is the critical problem. This limits the future growth of the City and restricts new improvements to the redevelopment of land already in urban use. The affluent middle class, which provides strong civic and political leadership, are migrating to the suburbs in ever increasing numbers as suitable housing is available only in these county areas.

The age and racial composition of the population of Richmond is a serious problem. The very young, the very old and the low income residents of the City create problems that are common only to the central or core cities. To meet the demands and needs of these people, special educational programs must be implemented. Police, health and welfare costs are to a great extent, determined by the numbers of people falling within these categories. The disparity between the social needs and the economic resources of the central city is detrimental to the future economic structure of the metropolitan region. The imbalance of the population of Richmond between the rich and the poor, the educated and the uneducated, the young and the old, must be brought back into a reasonable balance in order that the City of Richmond can be properly governed for the benefit of all of its citizens as well as the Commonwealth of Virginia.

## POPULATION

### Growth and Characteristics

The Richmond Region constitutes one of 212 areas in the United States defined as metropolitan by the Bureau of the Census as of 1960. The 1960 census figures showed that its growth of 24 per cent in the decade 1950-1960 was 7th highest among 48 areas of comparable size (250,000 to 500,000 population).

As a metropolitan area, the Richmond Region ranks 15 highest in population among 34 state capital areas (16 are not considered metropolitan areas according to the Bureau of the Census definition).

In the period from 1930 to 1968, the population of the Richmond Region has increased from 237,000 to an estimated 488,000 or 106 percent; that of the surrounding eight counties and three cities has grown from 119,000 to 205,000 or 72 per cent.

The population and rate of growth of the three jurisdictions making up the Region and of the surrounding eight counties and three cities, from 1930 to 1968 are shown graphically on Plate 1.

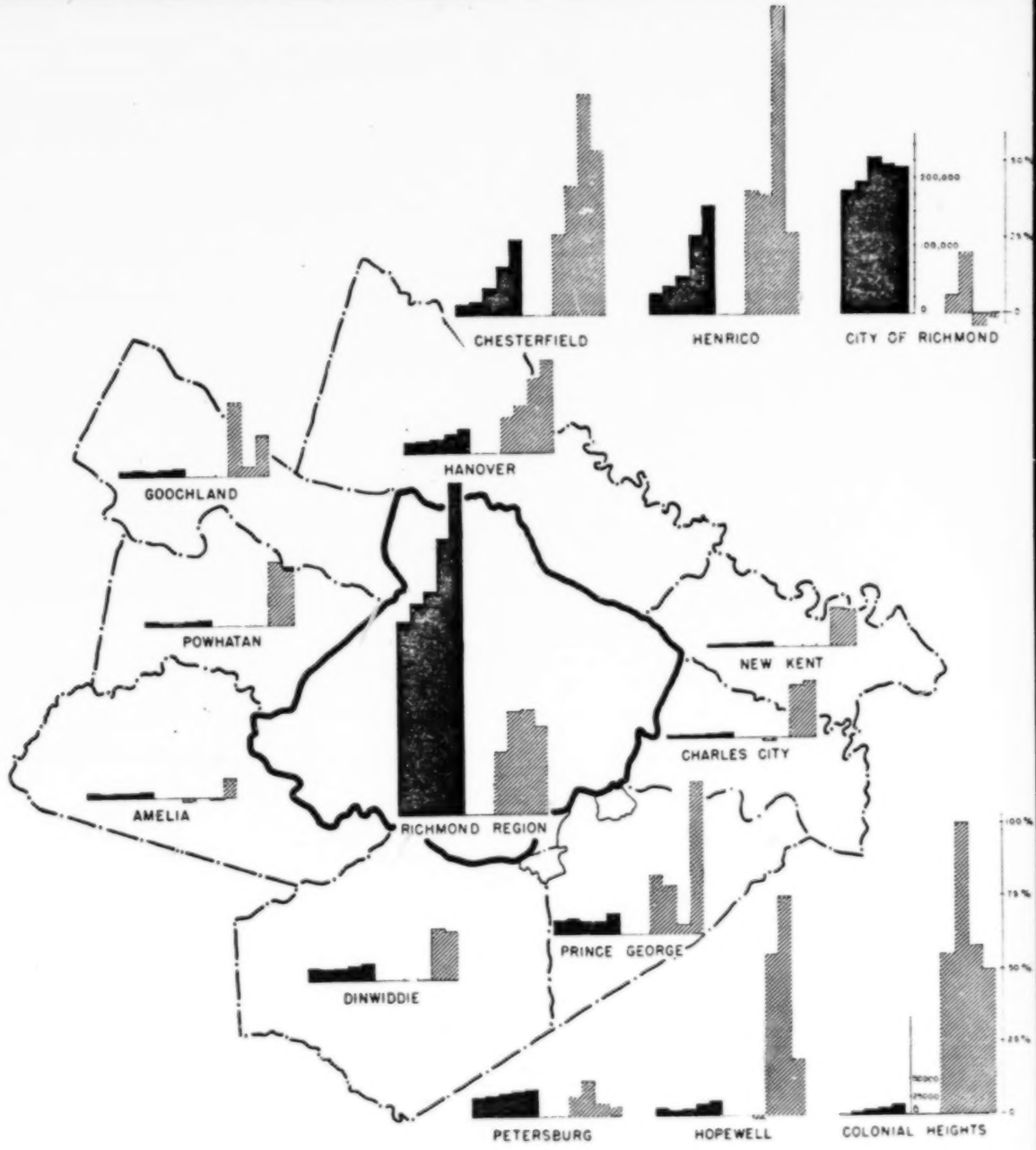
On Plate 2 is shown population trends. This comparison is for the United States, Virginia, and the Richmond metropolitan area. It can be seen visually by the slope of the line of growth that the Richmond metropolitan areas has been growing at about the same rate as that of Virginia and the United States. Virginia had rates of growth of 10.6% during the 1930-40 decade. It's rate increased to 23.9% during the 1940-1950 decade, lower to 19.9% during the 1950-1960 decade and is estimated at 16.4% in the years 1960-1968.

Population increase in the Region during this period has been as follows:

Table 1 - Population Increase

| | Population - 1,000's | | | | |
|---|---|---|---|---|---|
| Jurisdiction | 1930 | 1940 | 1950 | 1960 | 1968 (1) |
| Chesterfield County | 26 | 31 | 40 | 71 | 111 |
| Henrico County | 30 | 42 | 57 | 117 | 161 |
| Richmond City | 183 | 193 | 230 | 220 | 216 |
| Total | 239 | 266 | 328 | 408 | 488 |





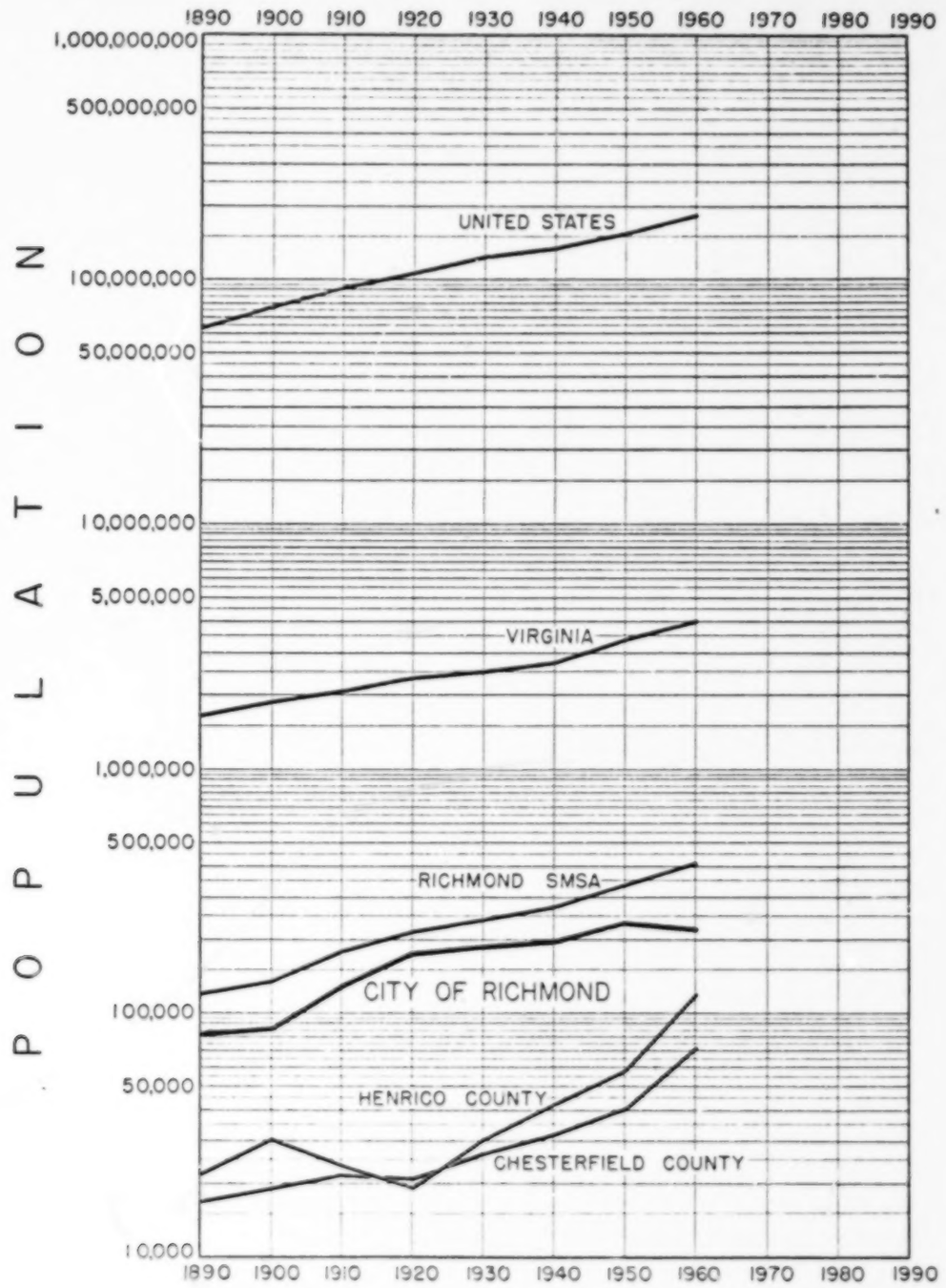

Prepared By
CITY
OF
RICHMOND
217 GOVERNOR ST

# POPULATION TRENDS

RICHMOND REGION & ENVIRONS

POPULATION RATE OF GROWTH

PLATE
1



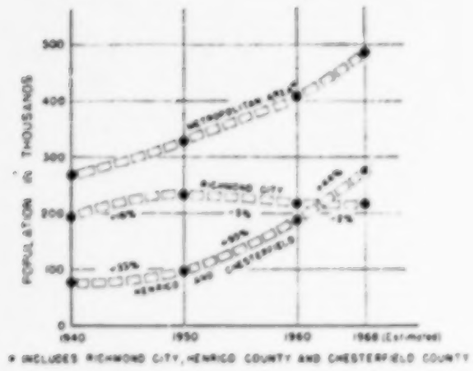

# POPULATION SIZE TRENDS

UNITED STATES, VIRGINIA,
RICHMOND SMSA, CITY OF RICHMOND,
HENRICO & CHESTERFIELD COUNTIES

SOURCE: U.S. BUREAU OF THE CENSUS

PLATE 2

In looking at the composition of the metropolitan area, we must look individually at the city and the two counties. This is grafted below:




COUNTY-CITY POPULATION TRENDS

Here we can see that Richmond lost population for the first time in its history between 1950 and 1960. During the decade, Richmond 5%, while Chesterfield County increased 76% and Henrico increased 105%. Henrico County during this period was the second fastest growing county in the State.

But, if you look at the period 1960-68, you will see that Richmond has continued to lost population at the rate of 2%, while in the counties, the pendulum has swung from Henrico to Chesterfield as the fastest growing. Chesterfield's rate of growth has gone from 76% in 1950-50 to 56% in 1960-68 and, Henrico has decreased from 105% in 1950-60 to 37% in 1960-68.

Thus, the counties have had the major population increase in the region during this period, and the city in the last 18 years has suffered a loss of population.

Expected population, and percentage increased up to 1985 as follows:

Table 2 - Population Estimates in Thousands

| Jurisdiction | 1970(1) | 1980(1) | 1985(2) |
|---|---|---|---|
| Chesterfield County | 132 | 170 | 220 |
| Henrico County | 171 | 200 | 233 |
| Richmond City | 215 | 230 | 260 |
| Total | 518 | 600 | 713 |

Note:
(1) Division of Planning, Commonwealth of Virginia
(2) Richmond Regional Planning Commission

| Jurisdiction | Percentage Increase 1960-70 | 1970-1980 | 1980-85 |
|---|---|---|---|
| Chesterfield County | 86 | 29 | 30 |
| Henrico County | 46 | 17 | 16 |
| Richmond City | -2 | 7 | 13 |
| Total | 27 | 16 | 19 |

The estimated increase in Richmond's population following 1970 can be achieved only with massive renewal activity and thus may not be a realistic projection.

The following plate 3 graphically portrays the change in age and race composition of Richmond compared to that of the total metropolitan area.

Richmond suffered an imbalance in population since 1950 as compared with the normal age distribution from the metropolitan area. There has been an exodus of young white families from the city from ages 20 through 54, as well as children in the 0 to 9 year ages. The adult age group of 20 through 54 represents the working and productive age that is so vital to the city's economy as well as productive leadership group.

There has been some growth in whites in the 60 year old and above, but this represents people approaching retirement.

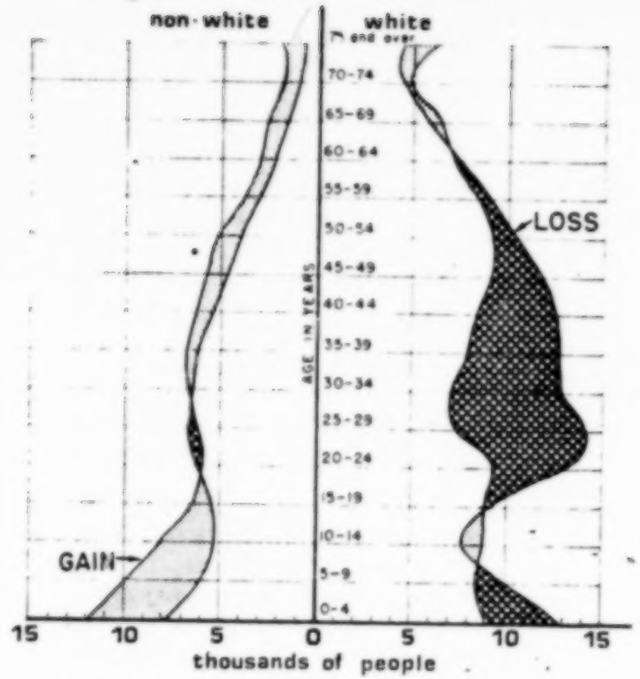
The city gained in non-white population with increase in the older age groups and extremely large increases in the 0 - 19 age group. Within the city, from 1950 to 1960, the non-white population increased 18,890 while the white population decreased 29,601 producing a net loss of 10,711.

In 1968, the City Planning staff of Richmond estimates the ethnic composition of Richmond is 45% white and 55% non-white. This represents a steady increase of non-white persons migrating into Richmond to replace the former white Richmonders who have migrated to the counties. An analysis of the ethnic composition since 1940 is shown in the table below.

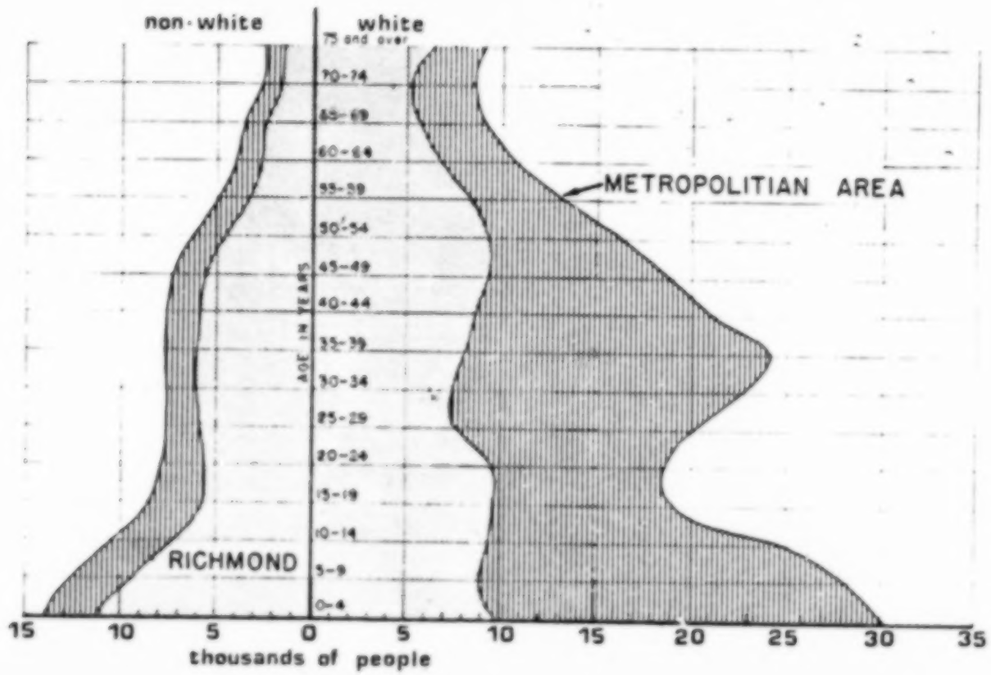
Table 3 - Ethnic Composition

| | 1940 | | 1950 | | 1960 | | 1968 | |
|---|---|---|---|---|---|---|---|---|
| | White | Non-white | White | Non-white | White | Non-white | White | Non-white |
| Richmond | 68% | 32% | 68% | 32% | 58% | 42% | 45% | 55% |
| Henrico | 83 | 17 | 90 | 10 | 95 | 5 | Unavailable | |
| Chesterfield | 80 | 20 | 79 | 21 | 85 | 15 | Unavailable | |






POPULATION TREND 1950-1960




POPULATION COMPOSITION 1960

PLATE 3

After a decrease in annual white birth rate of 18 to 16 per 1,000 in the period from 1953 to 1957, the white birth rate has held at 16 per 1,000 through 1967. The non-white birth rate increased from 29 to 31 per 1,000 in the same period, but continued on a downward trend since 1959 to a rate of 22 per 1,000 in 1967.

The death rate of the white population increased from 10 to 12 per 1,000 from 1953 to 1957 and now has reached 16 per 1,000 in 1967. The non-white rate has held steady at 12 per 1,000 from 1953 to 1957 and now has declined to 11 per 1,000 in 1967.

The changes shown above in birth and death rates for white and non-white show the white birth and death rates as equal, providing for no natural growth and possibly reflect two other factors: (1) The middle age white population is moving to the suburbs and leaving the City with a higher portion of older persons. (2) The national trend for both white and non-white is toward a lower birth rate.



## URBAN CHARACTERISTICS

There is no sharp dividing line that distinguishes the urban community from the rural community. Urban areas are, generally, considered to be developed centers of population containing concentrations of homes, industry and commerce rather than farms, woods and fields. Urbanization is the product of the industrial revolution. The urban community now has two ill defined components, the central city and the suburbs. The latter component is the spill over of the city and is the product of the automobile and improved highways. The November 6, 1967 issue of U.S. News & World Report indicated that only 27 per cent of the nation's population was rural and 73 per cent is urban. The urban fraction was 34 percent suburban and 39 per cent cities and towns.

The classification of urban is used without a clear definition and is associated with both population densities, which measure the intensity of the residential development of segments of a region, and land use. The Virginia Supreme Court of Appeals has used this classification in the review of annexation cases such as County of Chesterfield vs Berberich 194 Va. 500 and County of Norfolk vs Portsmouth 186 Va. 1032 with the statement to the effect that the policy of the Commonwealth is to place urban areas under city government and to keep rural areas under county government.

The 1960 Federal census classified enumeration districts with a density of 1000 inhabitants or more per square mile (excluding large non residential developed tracts) as urban. Harland Bartholomew, the noted land use planner, has stated that a density above 40 can not be considered rural.

It is appropriate first to analyze densities of the city and the counties as a whole. The table below compares the gross density of these areas since 1940 using the 1942 boundary of Richmond.

Table - Gross Densities

| | Persons Per Square Mile | | | |
|---|---|---|---|---|
| | 1940 | 1950 | 1960 | 1968 |
| Richmond | 5,200 | 5,760 | 5,500 | 5,400 |
| Henrico | 110 | 235 | 480 | 655 |
| Chesterfield | 50 | 85 | 150 | 235 |

The Public Administration Service report, A Plan of Government for The Richmond Region, dated 1959 listed the 1950 population densities of 17 selected cities of large area. Richmond had a much greater density then and has retained this dubious destinction according to 1965 estimates of population. Only one of the cities, other than Richmond had a lesser density in 1965 without a major extension of its boundaries.

A Look at densities of the larger Virginia cities in 1968 will reveal:

| | |
|---|---|
| Alexandria | 7,515 Person/sq. mile |
| Portsmouth | 5,550 |
| Norfolk | 5,045 |
| Hampton | 1,676 |
| Newport News | 1,155 |
| Virginia Beach | 510 |
| Chesapeake | 230 |

A city resulting from the consolidation of Richmond and Henrico County would have a density of 1,325 persons per square mile. The addition of the area that Richmond is seeking to annex from Chesterfield County would increase this density to 1,340 persons per square mile. These extensions of the boundaries of the City of Richmond would result in a city with a density greater than three of the seven Virginia cities listed above.

Detail data concerning the distribution patter of population between the decennial census are lacking on a regional basis. Henrico County conducted a special census in 1963 and Chesterfield County conducted a similar census in 1968 in connection with their defenses of Richmond's annexation suites. This data, along with other analysis of housing trends, has been used in conjunction with the 1970 census tracts to determine the 1968 density of residential development within the counties of Henrico and Chesterfield. The estimated densities of the census tracts are shown on Plate 4.

It is of significance to note that urbanization in Henrico County, of the same density range as the cities of Petersburg and Hopewell, has extended from Richmond to the Goochland County line. Also, that much of the northeast part of Chesterfield County has reached this same density.

A large part of Varina Magisterial District in Henrico's east end has not reached a density of 100 persons per square mile. In 1960, this area had a density of 56 persons per square mile which, in 1963 had increased to 66 persons per square mile. The density in 1968 is estimated to be between 80 and 90 persons per square mile. This area, even though it is the most rural part of the County shows indications of beginning to become urban.

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CITY
OF
RICHMOND
217 GOVERNOR ST

1968 POPULATION DENSITY
BY COUNTY CENSUS TRACTS
PERSONS PER SQUARE MILE

- LESS THAN 100
- 100 to 499
- 500 to 999
- 1000 to 4999
- 5000 to 10,000
- OVER 10,000

PLAT
4

Another measure of urbanization is land use. On Plate 5 is shown the geographic distribution of land in use as taken from the land use map in the report of the Richmond Regional Development Plan, by Marcou, O'Leary and Associates, June 1967. The land use data is for 1965, as portrayed in this plate.

The same consultants also submitted a report, Analysis of the Physical Potential for Development of Land in the Richmond Region prior to the above mentioned report in which detail land use data was published. This data seems to be for the year 1963. A summary of their table 1 is below.

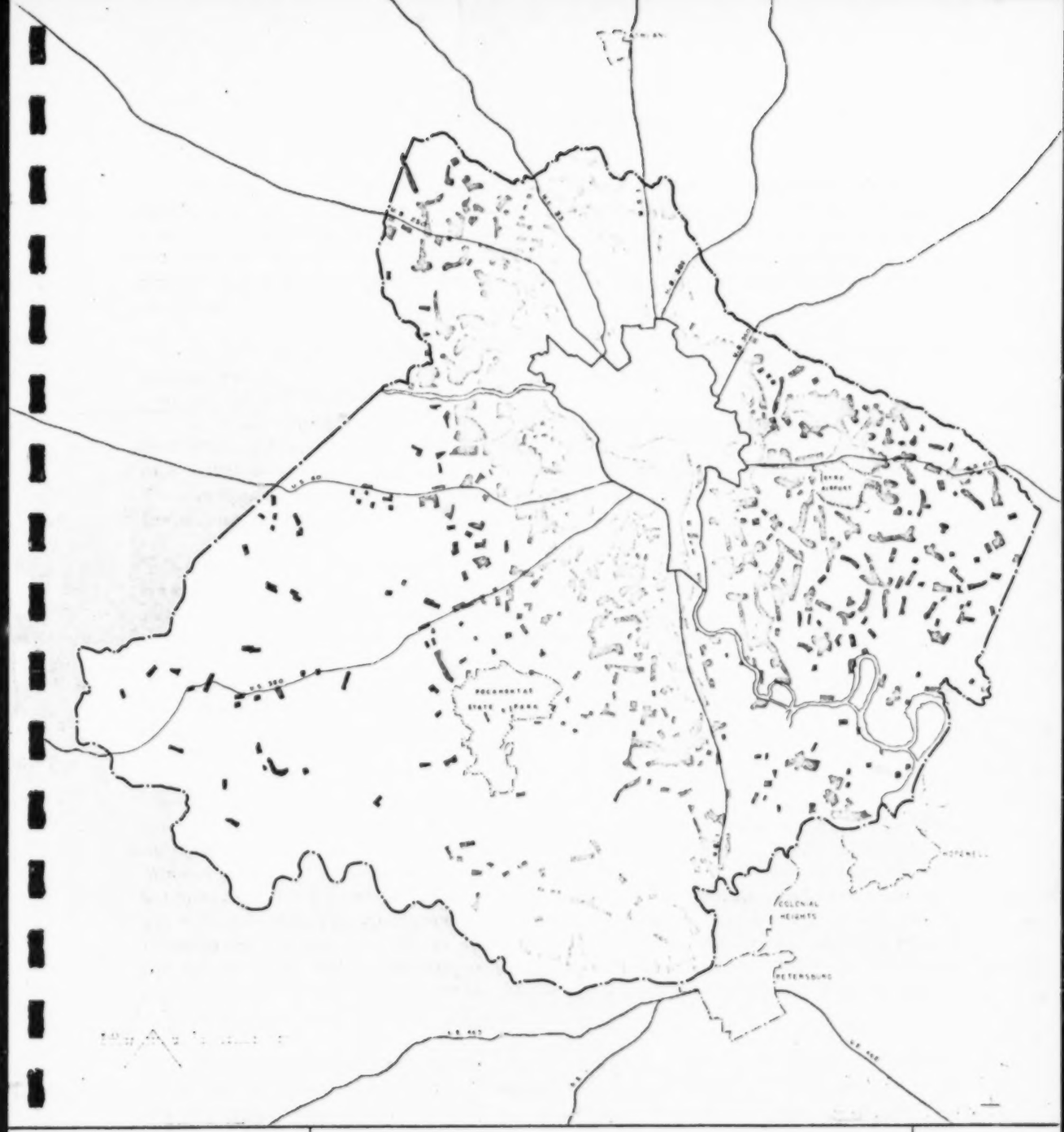
Table - Gross Acres Land Use

| | Henrico | Chesterfield | Richmond |
|---|---|---|---|
| Residential | 14,681 | 10,799 | 11,497 |
| Commercial | 775 | 612 | 1,309 |
| Industrial | 2,979 | 1,338 | 2,705 |
| Public & Semi-Public | 1,733 | 575 | 3,947 |
| Parks & Playgrounds | 2,052 | 7,932 | 1,152 |
| Developed Land | 22,220 | 21,256 | 20,610 |
| Vacant | 128,125 | 278,427 | 4,990 |
| Total | 150,345 | 299,683 | 25,600 |

The extent of urbanization in the metropolitan area can be considered in two forms. By percentage, Richmond was 80% developed, whereas Henrico was only 15% built up, and Chesterfield was 7% built up. By actual area developed, both the counties of Henrico and Chesterfield had a larger amount of developed land than the city. Development during the insuing five years has been concentrated in the counties so that the disparity is greater today.

Although the percentages of county land in urban use were relatively small in 1953, the graphical presentation of the 1968 development patters on Plate 6 gives a clearer picture of the current extent of urbanization.



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OF
RICHMOND
217 GOVERNOR ST

EXTENT OF URBANIZATION
1968
EXISTING RESIDENTIAL, COMMERCIAL
AND INDUSTRIAL DEVELOPMENT

PLATE
5

## VACANT LAND

The quantity of vacant land within a city has a direct relationship to a city's ability to cope with changes in economy. As buildings and structures wear out, their users must relocate to other areas during the time required for redevelopment. In addition, if a city to cope with growth, whether in the private or public sector, there must be space for its citizens to live, work and play.

In past decades, Richmond was able to acquire the necessary vacant land by annexation.

In 1940, when Richmond sought annexation, the vacant land amounted to 26% of its area. The courts recognized Richmond's plight and awarded the city sufficient land to increase this percentage to 36.6% or 8,737 acres. This increase in vacant land restored the city's ability to cope with growth for a number of years.

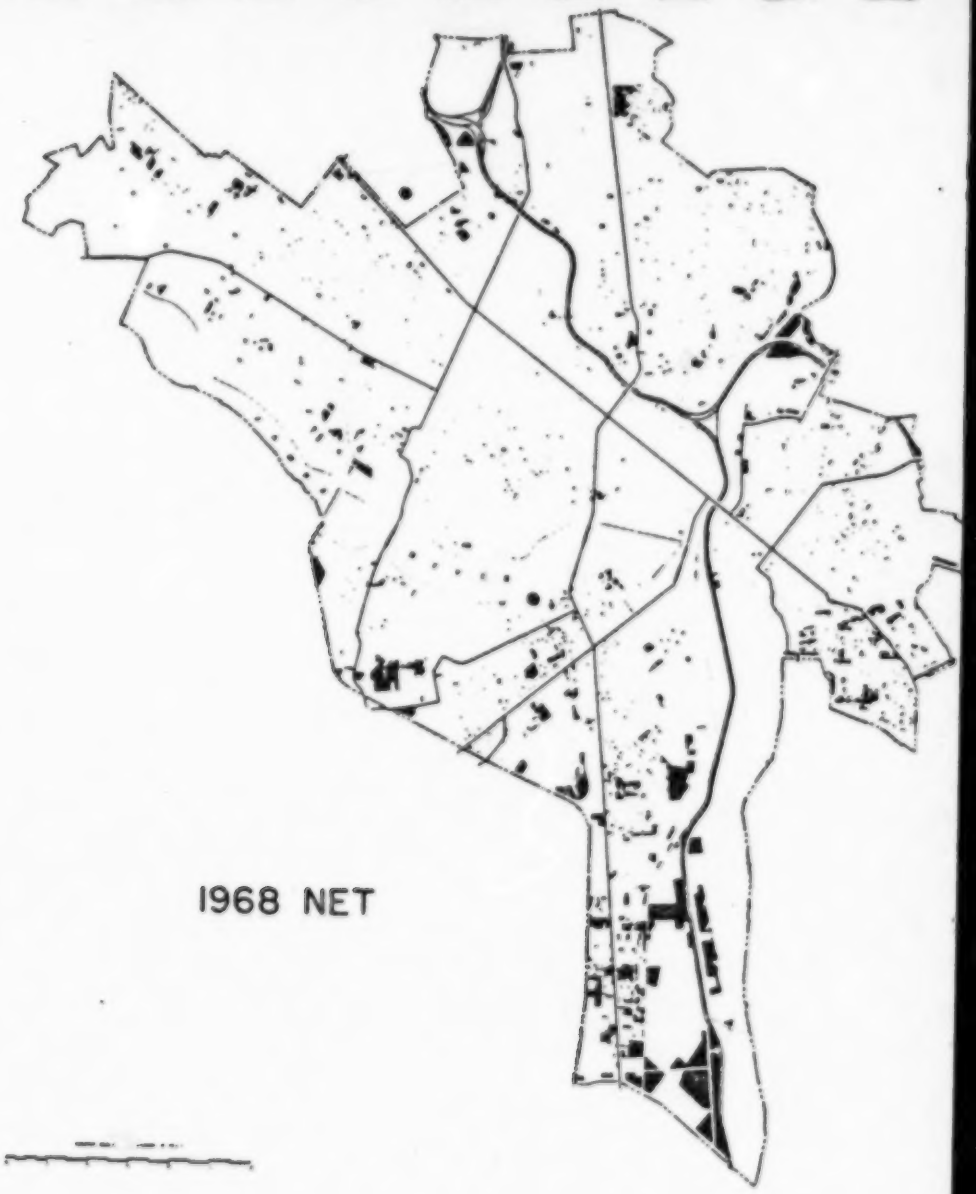
After World War II, there was a change in land use patterns, industries wanted larger tracts, plants expanded horizontally instead of vertically, residents wanted larger lots for their homes, and emphasis was placed on projects that consumed land at a faster rate.

Richmond developed land at the rate of about 650 acres per year. In 1956 the supply of vacant land had dwindled to 6,120 acres or 25.6%. By 1963, the time of the Henrico annexation case, this had further reduced to 4,011 or 16.8%.

By 1968, the vacant land supply was an all time low of 12.6% or 3030 acres. This 3030 acres is gross land within the city, quantitiatively correct, but qualitatively incorrect. This 3030 acres includes many small and odd shaped parcels, it includes land subject to inundations, land with excessive topography, land held or reserved for municipal purposes, and land held by private industry for their own plant expansion. When these factors are considered, it reduces the available land supply to 1548 acres or 6.4% of the city's land. This comparison of present day land supply with what was the city's vacant land supply in 1942 can be seen graphically on the map on the following page.

This shortage of vacant land has been a major factor in the growth of the surrounding counties. In these counties there is available vacant land in large parcels and in quantity sufficient to invite private capital to pass over undesirable parcels within the city. In the Richmond area, with its unified basic economy, entrepreneurs are not able to cope with the problems of land assembly and private renewal that is required for building within the city when suitable, vacant land is available in the adjacent counties.

1942 GROSS



1968 NET

# VACANT LAND

PLATE
6

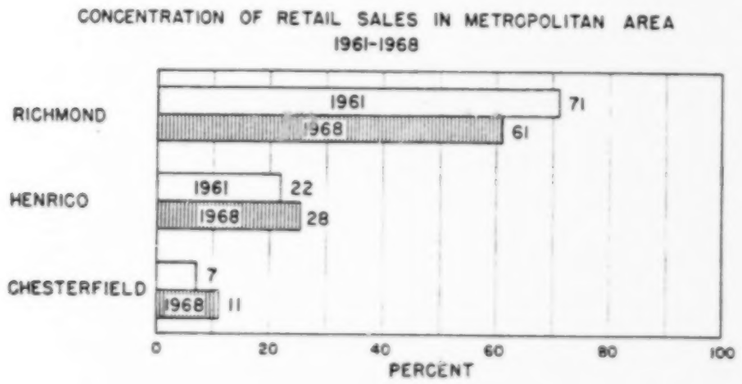
# THE ECONOMY

The pattern of urban development in the metropolitan area is influenced by local economic growth and by economic activities elsewhere in the state, region and nation. To study the economy of the metropolitan Richmond area, we must look at a number of factors influencing this growth. These factors will be discussed in subsequent pages.

## Retail Trade

Richmond has historically been the trade center for an area of about 40 counties and 10 cities. This area receives about 25% of the disposable income of the State. After World War II, and with the coming of outlying shopping centers, Richmond's share of this retailing has been decreasing.

A close look at Richmond's position as a retail center can be seen in the chart below:




This chart which covers the period from 1961, the year of the merger study to the end of the 1968 fiscal year, shows that Richmond has lost 10% of the retail sales of the metropolitan area, whereas Henrico has gained 6% and Chesterfield has gained 4% within a period of seven years.

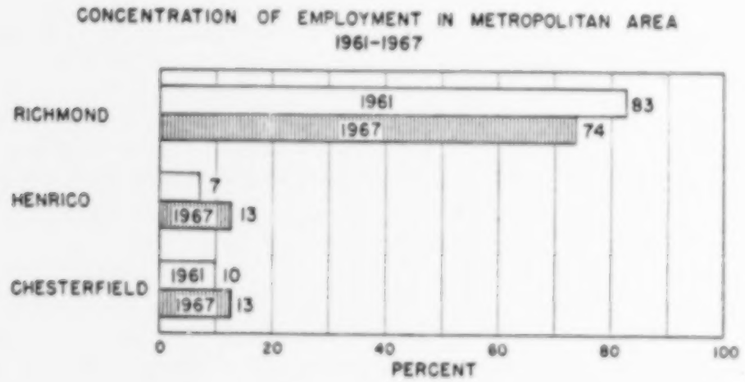
The loss of retailing, the sales taxes, and business taxes derived from these sales create voids which the central city has to make up in its search for revenues to balance its budget.



## Employment

Growth in population and job opportunities are interrelated. Thus as job opportunities have ma :rialized, people have moved into the cities to fill these jobs and cities or the adjacent territory have grown in population.

In past years, job opportunities were primarily found in the cities, but now this pattern has changed. In an analysis of State Employment Commission reports for 1961 and 1967 illustrate this change.




Employment has risen by 18% during the period 1961-1967, but this growth has taken place primarily in the counties as indicated by the chart above.

But even with this growth by the counties in employment opportunities, there is a shortage of job opportunities for their working population.

The following table shows that Richmond provides almost two jobs for everyone in its resident labor force, whereas Henrico and Chesterfield are far from being self sufficient in their ability to employ all of their labor force.

| | 1967 Labor* Force | 1967 Job Opportunities | % of Labor Force Opening to Job Opportunities |
|---|---|---|---|
| Richmond | 93, 725 | 175, 961 | 187 |
| Henrico | 64, 714 | 31, 550 | 49 |
| Chesterfield | 41, 513 | 30, 433 | 73 |

This tabulation does not reflect the interchange of workers between the three jurisdictions. The 1960 census showed that the city provided employment for 91. 8% of its own working residents and, 69. 7% and 46. 1% of the working residents of Henrico and Chesterfield respectively.

This interplay of employment is another indication of community of interest that exists between Richmond the surrounding counties.

The following map which is from the Richmond Regional Area Transportation Study graphically shows the other areas upon Richmond for employment in 1964, and projects the dependence that is expected in 1980.

*Estimated from 1960 ratio of labor force to total population.

EMPLOYMENT COMPARISONS 1964-80

PLATE 7

## Tax Base

The ability of a community to finance the programs of local government is governed by its economic base, legal limitations imposed by the Constitution, charter, and statues, and by the willingness of the people to pay the cost of meeting the needs of the community. In analyzing the tax base of a community, there are many sources of revenue, but all sources of revenue are, in the final analysis, derived from the income of the private and corporate citizen.

The largest single revenue item in local government budgeting is real estate taxes, so this is the best available common denominator for statistical comparison.

With assessment practices varying in the Richmond metropolitan area, it is necessary to convert real estate assessment to fair market value. The table below contains information from the PAS report, A Plan for Government for the Richmond Region.

| | Assessed Value in Millions | Sales Ratio | Fair Market** Value in Millions |
|---|---|---|---|
| Richmond | 673 | 81% | 831 |
| Henrico | 151 | 40% | 378 |
| Chesterfield | 68 | 29% | 234 |

Similar data for 1968 is as follows:

| | Assessed Value* in Millions | Sales* Ratio | Fair Market** Value in Millions |
|---|---|---|---|
| Richmond | 1,026 | 89.9 | 1,141 |
| Henrico | 311 | 33.0 | 942 |
| Chesterfield | 215 | 30.3 | 710 |

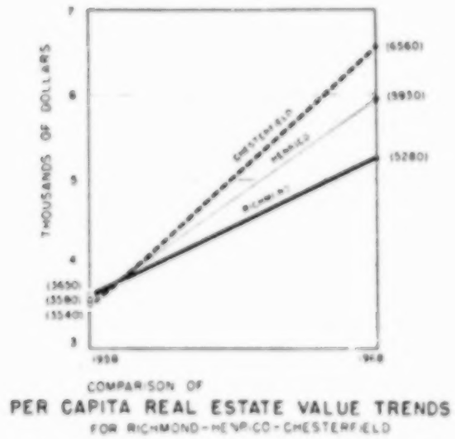
* Ratio of assessed value to sales value, Virginia Dept. of Taxation
** Computed



The percentage distributions and the changes during the ten year period are as follows:

| | 1958 | 1968 | % Change |
|---|---|---|---|
| Richmond | 58% | 41% | -17 |
| Henrico | 26 | 34 | + 8 |
| Chesterfield | 16 | 25 | + 9 |
| Total | 100 | 100 | 0 |

This dispersity is further exemplified by the chart below:




COMPARISON OF
PER CAPITA REAL ESTATE VALUE TRENDS
FOR RICHMOND-HENRICO-CHESTERFIELD

In 1958 Fair Market Value of Real Estate Per Capita in the three jurisdictions were within $95 of each other, with Richmond being the leader. With the growth in the counties, this relationship has changed drastically. There is now a dispersity of $1280 per capita between Richmond and Chesterfield, and likewise a dispersity of $650 per capita between Richmond and Henrico.

This disparity in resources has resulted in the following disparity in true tax rates:

| | 1958 | 1968 |
|---|---|---|
| Richmond | $1.52 | $1.65 |
| Henrico | .98 | .97 |
| Chesterfield | .72 | .94 |

The total disparity in the cost of services is not as great as is indicated by this tabulation due to additional services provided by the city and the lower service charges imposed.



## Industry

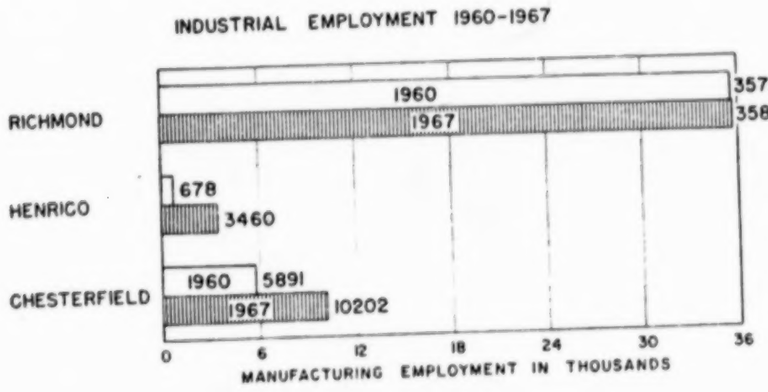
Richmond is the largest center of manufacturing activity in Virginia. Its industry is a principal source of the economic vitality and growth of the metropolitan area.

Richmond's position as the gateway to the South, and its dominance as a transportation center has caused Richmond industry to prosper. This coupled with a steady population growth has made a climate for steady industrial growth.

This growth can best be understood in the reports of the Virginia Employment Commission.

In 1960 the Richmond Metropolitan Area had employment of 32, 296 persons in manufacturing. In 1967, this had risen to 49, 487 persons, or an increase of 17 percent. This growth in manufacturing closely parallels the growth of the area in population.

The disproportion of this growth can be seen in the chart below.




As can be seen by the chart, Richmond is still dominant as having the largest concentration of manufacturing employment. The shocking thing is that as employment has risen in the metropolitan area, Richmond has only grown by 98 jobs, whereas Chesterfield has grown by 4, 311 jobs and Henrico by 2, 782. This growth percentage-wise is expressed as follows:

| | |
|---|---|
| Richmond | 0.2% |
| Henrico | 410.3% |
| Chesterfield | 73.1% |

Manufacturing activity in the Richmond Metropolitan Area can be expected to increase steadily, as its population increases. But with Richmond's lack of vacant land, the City cannot expect to compete with the surrounding counties for these industries. Furthermore, because of obsolete plants, traffic congestion and similar problems in the city, relocation of Richmond industries can, and will likely continue to be made, on vacant land in the counties.

## Income

Per capita income is an indication of the ability of citizens to pay for municipal services. In 1960, of all families living within the Richmond region with income of $3000 or less, 76% lived in Richmond, 10% in Chesterfield County, and 14% in Henrico County. The income level of $3000 or less is considered by the government to be the poverty level.

Per capita income for the region for the period 1960-1965 is shown in the table below.

| | Richmond | Henrico | Chesterfield |
|---|---|---|---|
| 1960 | $2,272 | $2,568 | $2,294 |
| 1965 | 2,419 | 3,165 | 3,255 |
| Increase | 147 | 597 | 961 |

Source - University of Virginia Bureau of Population & Economic Research

Income has a direct relationship to municipal services required by citizens, as well as to the citizens' ability to pay for these services. With the high demands of the citizens of Richmond for services and their low economic ability to pay for these services, Richmond's financial future is grim.

During this five year period, the per capita income of the residents of the city increased by only $147 which was less than the income lost by inflation. The increase for residents of Henrico County was four times that of city residents and the increase for residents of Chesterfield County was six times as great. These increases were more than sufficient to cover the loss by inflation.



# MUNICIPAL SERVICE

In the Richmond region, all three jurisdiction provide the services provided for by General Law. Other services are provided by the jurisdiction according to established governmental policy. The table below lists these major services and each will be discussed later.

Comparison of Municipal Services

| | Richmond | Chesterfield | Henrico |
|---|---|---|---|
| Education | X | X | X |
| Health | X | X | X |
| Housing | X | | |
| Libraries | X | X | X |
| Planning | X | X | X |
| Public Safety | X | X | X |
| Public Works | X | X | X |
| Public Utilities | X | X | X |
| Recreation | X | X | X |
| Welfare | X | X | X |

## Education

All three jurisdictions have excellent school facilities and educational programs. Richmond and Chesterfield provide education from kindergarten to grade 12. Henrico does not have a kindergarten program. In terms of students, 1968-69 enrollment was 45, 419 for Richmond, 27,110 for Chesterfield and 33,077 for Henrico.

In the terms of educational cost during 1967-68, Richmond spent $508.90 per pupil, whereas Chesterfield spent $450.09 and Henrico spent $496.38 per pupil for educational cost.

The dispersity in education is that in Richmond with its high percentage of disadvantaged, there are increased cost for special education that is not needed in the counties. Richmond has had to build a large Technical Center to train persons not able to go to college. It has also had to institute other programs for disadvantaged that can only be associated with core cities.

## Health

There is great differences in Public Health Service in the area. Richmond spends nearly four times as much for health service as the two counties put together. With the older structures in Richmond, there is a terrific need for environmental and housing sanitation, something nonexistent in the counties with its newer structures. With its imbalance of population, Richmond has a costly program of medical aid to the elderly, again something found much less in the affluent counties.

## Housing

Richmond and other older cities has a critical housing problem. In a study in 1966, there was an indicated need for 7,000 dwelling units by 1971 to replace dwellings expected to be removed from the housing supply. In asmuch as old city dwellings wear out, they must be replaced if suitable living standards are to be maintained for its citizens. In the county, where there is not this problem of aged structures, there is presently no need for this type of program. But in years to come, they too will be faced with this dilemma. With Richmond's lack of vacant land, this much needed arm of city government is hampered in meeting its task.

## Libraries

All three jurisdictions in the region have library systems. But there is a difference in amounts spent on the library as well as quality of service. Richmond spends $3.06 per capita for libraries and has a book collection of 395,842 volumes. Henrico spent $0.90 per capita for a partial year of operation and now has a book collection of 61,226. Whereas Chesterfield spends $1.09 per capita for library service has a book collection of 29,266 volumes.

## Planning

Each of the three jurisdictions have Planning Commission and staff. Also there is a Regional Planning Commission and staff.

But planning is a process which looks into the future for the purpose of influencing the well being of the people. When there is one socioeconomical area fragmentation of roals and aspirations of the community cannot be tolerated.

With four planning bodies going in their own way, the best interest of the community is not being served. Planning being an advisary and guiding service to local government should be on an all-over scope.

## Public Safety

Public safety is of serious concern to the whole region. Fire, crime and catastrophe knows no boundaries so preventive measures as well as suppression measures must be equal in all three jurisdictions. As of now, there is dispersity in equipment and manpower in the area. This can be readily seen on the following table.



| | Richmond | Henrico | Chesterfield |
|---|---|---|---|
| Police Personnel/1000 pop. | 2.6 | 0.9 | 0.7 |
| Fire Personnel/1000 pop. | 2.1 | 0.6 | 0.1 |
| Fire Apparatus/1000 | 0.2 | 0.2 | 0.4 |
| *Building Inspection/1000 | 0.1 | 0.1 | 0.1 |

*Building, electrical, plumbing

As can be seen above, preventive and suppressive measures of municipal employees are not equal in the region.

## Public Works

Chesterfield County does not maintain its own roads and streets. This is done by the State Highway Department. In Henrico County, secondary roads and streets are maintained by the county and the State Highway Department maintains primary roads. Richmond maintains both primary and secondary streets and roadways.

Another major function of public works in an urban area is solid waste collection and disposal. In Richmond, trash and garbage is collected twice a week from all of its residents. This essential health service is not performed equally in the county by the municipal government. Chesterfield collects trash once a month from all of its residents, and relies on private scavengers to pick up trash and garbage from its highly urban residents. In Henrico, the county picks up trash and garbage from less than one half of its residents, and allows private scavengers to collect from the remainder of the populous.

All jurisdictions provide drainage facilities although the quality and extent of this service vary greatly. Richmond has provided this service for many years and is served by a comprehensive storm drainage system. Most of the county facilities have been provided in conjunction with highway projects. Henrico County recently established a central program within its planning department and has constructed some rather extensive facilities to correct serious flooding problems. Chesterfield County's Engineering Department is becoming more active in this field and on occasions the limited expenditure of public funds have been authorized to correct chronic problems.

## Public Utilities

All three jursidictions provide water and sewer service while only the City of Richmond distributes natural gas. The city makes this service available to a major portion of Henrico County and a limited portion of Chesterfield.

The city water and sewer systems have been established for many years and a liberal policy concerning the extension of such service to the adjacent counties has assisted in the rapid urbanization of the counties.

Both the water and sewer treatment plants have been designed to serve the growing population of the region and are currently capable of serving additional portions of the adjacent counties.

The city is faced with a serious problem in connection with the combined sanitary and storm sewers that serve the older sections of the city. This problem is common to most older, core cities as such sewers were constructed before the need for sewage treatment and stream pollution control were realized.

Henrico County utilizes sanitary districts as the vehicle for financing the construction of water and sewer facilities and currently has a total of twelve such separate units. The facilities to serve new developers are usually provided by the developer. Most of the county districts distribut water purchased from the city and a recent contract also provides for the city to treat the sewage collected by the county facilities.

Chesterfield County has, until fairly recently, depended upon the city for its major source of water as the capacity of its separate facilities could not keep pace with its growing needs. Now, with three separate souces, the county will soon discontinue the use of city water. The water system is operated on a county wide basis as is the sewer system that was initiated in 1962. Prior to the operation of these facilities, the city provided disposal service for some adjacent areas. The county disposal facilities consist of one conventional treatment plant s erving the area adjacent to the city and numerous small lagoons serving isolated portions of the county. The facilities to serve new developments are usually provided by the developers and the county is continuing with a construction program to provide service for the older homes.

## Recreation

Richmond has the only full-time recreation program. In 1967-68 it spent $2.3 million in support of these activities. It also employed over 300 persons on a full time basis in park maintenance and recreation administration. Henrico and Chesterfield have a part-time summer and a limited winter recreation program.

Henrico and Chesterfield both have State or Federally developed public parks, but only a few acres of county owned parks which are not fully developed.

There are a number of private community recreation groups in both counties, some of which provide swimming pools. The City of Richmond has public swimming pools for its citizenry.



## We'fare

Welfare expenditure in Richmond as opposed to the counties, is the ele nent of greatest dispersity. Richmond with its old, poor, and high percentage of disadvantaged families makes for obviously high welfare cost. Public assistance for the needy is an essential governmental function in a de nocracy such as exist in America.

In the disapportionment of population in the region, with the disadvantaged in Richmond and the affluent in the counties, Richmond taxing structure is unjustly strained to care for the regional welfare problem.

## Governmental Expenditures

A summary of the operating expenditures for the three jurisdictions for the fiscal year 1967-68 is as follows:

| | Richmond | Henrico | Chesterfield |
|---|---|---|---|
| Education | 23,114 | 16,419 | 11,713 |
| Other Services | 47,708 | 9,547 | 6,318 |
| Total | 70,822 | 25,966 | 18,031 |

Sources: Richmond Department of Finance, Annual Reports of Henrico and Chesterfield Counties and Report of Superintendent of Public Instruction.

This summary is exclusive of capital improvements and utility operating cost and may not be exactly comparable due to the different accounting and reporting procedures used by the three jurisdictions. Utility expenditures were excluded as these services are financed on a selfsupporting basis in all jurisdictions.

The expenditures for education amounts to about two thirds of the total county expenditures and only one third of the city's. This dramatically illustrates the greater needs of the residents of the city for governmental services and the necessity for the larger tax burden imposed on the corporate and private citizens of the city.

The expenditures of the City for other services would have to be reduced by one half of the total expenditures or revenue sources hould be doubled in order to equal the counties favorable ratio of educational expenditures to the cost of other services.

## RICHMOND"S EFFORTS TO SOLVE ITS BOUNDARY PROBLEMS

### Merger Effort With Henrico

For at least a decade, the various Councils of the City of Richmond have recognized the necessity of the City to expand its boundaries. The first real definitive step taken by the Council was on August 15, 1960, which provided for a commission to prepare a joint agreement for the consolidation of the County of Henrico and the City of Richmond, pursuant to the merger law of the Commonwealth. This action had been preceded by similar action of the Board of Supervisors of Henrico County on July 28, 1960. The commission so appointed by the County and the City met and submitted its report on July 31, 1961. The consolidation agreement as contained in the report was approved by the City Council on October 10, 1961. A referendum was held on the question of consolidation in both the County and the City on December 12, 1961.

Merger Vote - December 12, 1960

| | Richmond | Henrico County by District | | | | |
|---|---|---|---|---|---|---|
| | | Brookland | Fairfield | Tuckahoe | Various | Total |
| For | 15,051 | 2,615 | 879 | 5,145 | 223 | 8,862 |
| Against | 6,700 | 4,599 | 3,975 | 3,734 | 1,339 | 13,647 |
| Total | 21,788 | 7,239 | 4,886 | 8,884 | 1,567 | 22,578 |

It is interesting to note that in Tuckahoe, the county's most densely populated magisterial district, the citizens voted for merger.

### Annexation - Henrico

With the failure of the merger, the Council on December 26, 1961, adopted an Ordinance which provided for the annexation of a portion of Henrico County. The area sought to be annexed contained 152 square miles and approximately 93,600 people.

Pursuant to the above ordinance, the City Attorney instituted the annexation proceedings on December 27, 1961. On February 1, 1952, counsel for the County filed a motion for a continuance, pursuant to 30-5 of the code. The county being represented by counsel who was a member of the General Assembly, the motion was granted and the case continued to May 10, 1962.

After a series of other court proceedings, the case actually began on its merits, on June 14, 1963. The evidence was heard over a period of 28 days during which approximately 414 exhibits were received in evidence.



The final transcript of the record totaling exactly 6,000 pages. The Court on April 27, 1964, in a written opinion, stated in part as follows:

I The City's Need for Additional Territory

"The testimony of the witnesses and the exhibits on the subjects of population increase in the areas under consideration, the density of population, the increase in housing units, the mobile and rapid spreading nature of the population correlate with and explain the testimony of other witnesses and their supporting exhibits on the need of the City for additional land for residential, commercial and industrial development".

II Community of Interests Between the City and the Area to Be Annexed

"***Workers living in the County of Henrico and employed in the City of Richmond are bound by the necessity of loyalty, good citizenship and plain economics of living to be interested in the community in which they work. Both City Exhibits 54 and 55 and County Exhibit 116 agree and prove that approximately 66% of the County residents have their employment in the City of Richmond. This rate of employment is higher in the fringe areas in varying percentages according to the exhibits. County inhabitants purchase clothing and furniture and other items at city stores, use city streets, use hospitals located in the city, attend theaters and sport events, make use of parks, libraries and restaurants located in the city. Dependence of the central City of Richmond and the immediately surrounding county is mutual. The evidence shows that the commercial and civic interests pf the city and county are largely identical."

III The Need for Governmental Services in Area Sought to Be Annexed

"Although Henrico County is well governed under the County Manager form of government and supplies its citizens with many essential services pursuant to the provisions of Section 15-10 of the Code and the Sanitary District Act, it is dependent upon the City to a large extent for water, gas and sewer services."

IV Financial Ability of the City to Annex

"The financial ability of the City to acquire by annexation a portion of the County is apparent from the evidence. The City enjoys AAA bond rating which is indicative of its high financil rating. Its budget is sufficiently balanced and it is capable of taking care of the needs of its citizens as well as any reasonably adjacent area which the Court may decree annexed.

"***It further appears from the evidence in this case that the City is conscious of the needs of the area".

Even though the Court was of the opinion that there was a community of interest between Henrico and Richmond, it did not award Richmond 16.16 square miles (10,340 acres) and 45,310 people. For this amount of land, the City was ordered to pay the County $41,435,000 and to spend $13,490,000 within five (5) years on capital improvements for the area awarded. The Council considered the award and cost was not in the best interest of the citizens and rejected the award.

## Annexation - Chesterfield

At the same time that the City Council authorized the annexation of a portion of Henrico County, it authorized the annexation of a portion of Chesterfield County. This suit was instituted on January 2, 1962 and the City sought to annex fifty-one (51) square miles of the County which then contained approximately 40,000 people. According to a recent population study, the area now contains approximately 72,000 people.

The suit was first delayed until the completion of the Henrico case and then by the necessity of appealing the 1965 dismissal on technical grounds. Trial on the merits was started in September 1968. After 23 days of testimony from 45 separate witnesses and within about five days before the completion of the trial, the Honorable David Meade White, the "local" or presiding Judge on January 9, 1969, disqualified himself from further service on the Court and declared a mistrial.

Because of this action by the Judge, it is necessary that a new Court be constituted and the matter be heard de novo.



## REASONS FOR BOUNDARY EXPANSION

The area encompassed within the present boundaries of the City of Richmond comprises only a portion of the total socioeconomic region that is generally considered to be "Richmond". Urbanization of the region has spread beyond the city limits and into and beyond the limits of the adjacent counties. The extent of this growth is indicated by the fact that more than 55 per cent of the population and 66 per cent of the developed land are located outside the boundaries of the city.

The adjacent counties have become urban and their governments are no longer structured according to the traditional form of county government - these differences in governmental responsibilities were explained by Donald H. Webster in Urban Planning and Municipal Public Policy (on page 27) as follows:

"In comparison with the government of rural areas, the political organization needed for urban communities is very complex. Nearly every aspect of urban life involves complicated relationships of social and economic interests. With the concentration of industrial and commercial activities in areas of high population density, local government has had to assume a correspondingly greater responsibility in providing services, in regulating individual conduct, and in promoting and directing the most advantageous pattern of community development".

"People living in rural areas are able to do many things for themselves or through group action wich in urban areas must be perfor ned for them by government. Many rural dwellers may safely and adequately supply their needs for water from individual wells and secure a fair measure of fire protection through informal or voluntary organizations. In urban communities these requirements cannot be met on an individual or group basis and become the responsibility of local government. Furthermore, inhabitants of densely populated communities require many public services which are not required at all in rural areas such as garbage disposal, traffic control, street cleaning. Other governmental responsibilities which exist in rural communities, such as law enforcement, promotion of public health, and highway construction and maintenance become much more complex in urban communities. Urban living requires a high degree of organization of business, institutions, and government. The complexity of human relationships of people who live in close proximity necessitates the adoption of many rules and regulations to govern their behavior and to promote the highest and most orderly development of their interests and community well-being".

The existence of three autonomous urban governments within a single socioeconomic region is of serious concern to the Commonwealth as no one unit of government can exercise the leadership and direction of the forces that are shaping the future of the region. Webster (on pages 20 & 21) explains the responsibility of government as follows:



"Constitutional government is concerned with both power and liberty. Public policies of government are effectuated by governmental power. Any government which cannot enforce its laws and preserve the order necessary to carry out decided policy will soon cease to be a government. Power is the essence of government and the central concept of politics. Included within the elements of power are the relationships of individuals and groups to society, the control of human behavior and some degree of consent or coercion in accomplishing the aims and objectives of govern nent. Powers of government are asserted and exercised in many ways. Among the most important of the specific powers are those of taxation, appropriation, eminent domain, and the police power. These specific powers represent means and methods by which government is enabled to carry out its policies and maintain order within society."

Th intense competition among the three jurisdictions preclude the formulation of public policies that promote the greatest benefits to the total region. Policy is frequently established on the basis of gaining an advantage for one segment of the region. Defense against potential annexation suits motivates independent actions on the part of the counties. Cooperative actions have been limited to participation in a regional planning commission and in the formation of two highway authorities and a park authority. These authorities serve to further fractionate the local government of the region.

The age of much of the housing of the City of Richmond and the earlier pattern of very dense urban development, result in the concentration of a disproportionate share of the poor, the undereducated, the old, and ethnic minorities in the central city as compared with the total region. Such residents are in need of more extensive welfare and other services that necessitate greater governmental revenues. On the other hand, the counties are reluctant to improve the quality of services as such action will increase their tax structure and thereby reduce their competitive position.

The counties, with greater fiscal resources, are failing to provide the quality of urban services needed by many of their citizens. The city, on the other hand, has more citizens requiring extensive services and far less resources to pay for the services. The boundary line that separates the units of government is entirely arbitrary, having been established almost a generation ago, and serves only to confuse and protect the special interest of limited segments of the population.

The fractionated conditions within the Richmond region have deteriorated to the extent that prompt action on the part of the General Assembly is now imperative. The residents of three jurisdictions have a common heritage and common interest. The areas have a common economic base and governmental policy decisions of one unit effect the others.

The local government of the larger urban areas in Virginia has long been delegated to municipal corporations known as cities. Only when the political boundaries of a city coincide with the socioeconomic city, can the city fulfill its responsibilities as assigned by the State. Section 2.01 of the City Charter



contains the following". . . to promote the general welfare of the city and the safety, health, peace, good order, comfort, convenience and morals of its inhabitants. . ." The City of Richmond can not perform these assigned responsibilities without the civic and political leadership, the vacant land, and the financial resources that are available only within the adjacent counties.

Supreme Court, U. S.
FILED
OCT 8 1974
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-201

CITY OF RICHMOND, VIRGINIA, *Appellant*,

v.

UNITED STATES OF AMERICA and WILLIAM B. SAXBE, Attorney General, and CURTIS HOLT, SR., *et al.* and CRUSADE FOR VOTERS OF RICHMOND, *et al.*, *Appellees*.

**On Appeal from the United States District Court for the District of Columbia**

## MOTION TO AFFIRM

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**On Appeal from the United States District Court for the District of Columbia**

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## MOTION TO AFFIRM

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Appellees, Crusade for Voters of Richmond, *et al.*, move that the Supreme Court of the United States affirm the judgment of the United States District Court for the District of Columbia entered on June 6, 1974, denying Appellant's request for declaratory judgment. They submit this Motion to show that it is manifest that

the questions on which the decision of the cause depends are so insubstantial as not to need further argument. This case involves the violation and attempted frustration of the Voting Rights Act of 1965 by the City of Richmond since January 1, 1970.

## OPINION BELOW

The opinion of the District Court for the District of Columbia is reported at 376 F. Supp. 1344. Copies of the judgment and opinion of the District Court, and the Findings of Fact and Conclusions of Law of the Special Master appointed by the District Court are attached to the Jurisdictional Statement of the Appellant.

## JURISDICTION

This suit was brought under Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c (1970), on a request for declaratory judgment. The judgment of the District Court was entered on June 6, 1974. Notice of appeal was filed in that Court on July 15, 1974. The jurisdiction of this Court to review this decision by direct appeal is conferred by 42 U.S.C. § 1973c (1970).

## QUESTION PRESENTED

Whether the Appellant has raised any substantial questions with regard to issues on which the determination of this cause depends.

## STATUTE INVOLVED

Section 5 of the Voting Rights Act of 1965, as amended by Act of June 22, 1970, 84 Stat. 315, 42 U.S.C. § 1973c (1970), is set forth in the Appendix to Apellant's Jurisdictional Statement.



## STATEMENT

The Appellees accept the Appellant's Statement with the exceptions and amplifications set forth below:

The white officials of the City of Richmond entered into the agreement compromising the suit for the annexation of a part of Chesterfield County because they were afraid that black voters would gain control of the City Council at the next election. Their sole concerns in entering into the compromise agreement were to gain a sufficient number of white voters to keep the blacks from gaining control and that the annexation become effective January 1, 1970 so that the additional white voters could vote in the next councilmanic election. Thecompromise was negotiated in secret meetings from which black leaders were systematically excluded. Once the compromise was agreed upon, the annexation case was rapidly concluded.

The pre-annexation population of the City was 202,359. Of these, 104,207 (52%) were black and 98,152 (48%) were white. The annexation added 47,232 people of whom 1,557 were black and 45,705 were white. After annexation, the population of the City of Richmond was approximately 58 per cent white and42 per cent black.

The City of Richmond put the annexation, and the voting changes which were the purpose and effect thereof, into effect without first complying with the Votng Rights Act. The City then held an election in violtion of the Voting Rights Act. The controlling white citizens organization retained control of the City Council in that election.

This suit was filed a few days before a hearing on the motion for summary judgment by the plaintiff in

*Holt II*. The plaintiff in that suit sought an order prohibiting the City of Richmond from continuing to enforce its illegally implemented change in voting practice and procedure. The grounds for that suit were that the City had not complied with the Voting Rights Act by obtaining the requisite approval either from the Attorney General or from the District Court for the District of Columbia. The Court in *Holt II* has not acted during the pendency of this action.

The ward plan adopted by the City of Richmond was drawn without any attempt to minimize the dilution of black voting rights which had been caused by the annexation. It contained five wards in which the white voting age population was greater than 60 per cent and only three wards in which black interests were reasonably sure of prevailing. The plan was adopted and presented by the white political leadership for the purpose of maintaining the dilution of the black vote produced by the annexation. A ward plan introduced by the Crusade for Voters of Richmond during the trial showed that it is possible to effectively minimize the dilution caused by the annexation but that the City had failed to do so.

The City failed to present the substantial evidence available to it which would have demonstrated the benefits flowing to the City from the particular annexation accomplished pursuant to the compromise.[1] Therefore, the District Court properly found that the City had failed to prove that it had a valid purpose for that

[1] The case study prepared by the Urban Institute and referred to in Appellant's Statement was not offered in evidence nor did Appellant call its authors as witnesses even though it is reported to have had such persons standing by in the Courthouse during the trial.



annexation. In the absence of such evidence and in the light of evidence that the City was still pursuing the improper purpose which had motivated the compromise annexation, the District Court concluded that the City of Richmond had not carried its burden of proof under the Voting Rights Act.

## THE QUESTIONS RAISED BY THE APPELLANT, CITY OF RICHMOND, ARE SO INSUBSTANTIAL AS NOT TO NEED FURTHER ARGUMENT

The City of Richmond violated the Voting Rights Act of 1965 by attempting to put into effect a change in voting practice or procedure without first obtaining either the consent of the Attorney General or a declaratory judgment from a three-judge District Court for the District of Columbia to the effect that the change had neither the purpose nor the effect of denying or abridging the right to vote on account of race or color. The change in question was the annexation of a portion of Chesterfield County. After holding an illegal election in which voters from the annexed territory helped elect a city council, the City of Richmond reluctantly sought the approval required by the Voting Rights Act. The Attorney General denied the request of the City and the City brought this action in the District Court for the District of Columbia. The decision of the District Court below was that the City failed to show that its 1970 annexation, as modified by a nine-ward plan, had neither the purpose nor the effect of denying or abridging the right to vote on account of race or color. That decision resolved against the City, which has not held a legal councilmanic election since 1968, the question of whether residents of the annexed area can vote in City elections. That question having been resolved against the City, and the City not having asked the

Court below to approve an annexation modified by a different, less discriminatory nine-ward plan, the City must now surrender the illegally annexed territory and hold an at-large election within the old City boundaries. An action is pending before the District Court for the Eastern Division of Virginia in which the Plaintiff, Curtis Holt, one of the intervenors in this action, seeks an order enjoining the City from continuing to exercise control over the annexed area. The only real question in that action is how soon the City should be ordered to surrender the annexed territory in the face of the decision of the District Court for the District of Columbia. If the decision of the District Court is summarily affirmed by this Court, there can be no reason for the City to delay and the District Court for the Eastern District of Virginia should have no difficulty in reaching a decision. The "procedural morass" which the City has created by its efforts to evade its legal duties and about which it now complains will have evaporated. It will be clear to any other city that may attempt to effectuate an illegal annexation that such an effort must fail.[2] The points raised by the City are clearly of so little merit that no further argument is needed and the judgment below should be affirmed.

**1. The District Court Properly Interpreted and Applied Section 5 of the Voting Rights Act.**

This is an action in which the City of Richmond seeks a declaratory judgment that its annexation, as modified by a nine-ward plan, was not improperly

[2] As of September 10, 1973, the Attorney General had entered objections to only 5 of the 705 annexations which had been submitted to him pursuant to the Voting Rights Act. The typical annexation has been submitted for clearance prior to implementation and has been found unobjectionable.



motivated and did not have an impermissible effect. As the plaintiff in a Voting Rights Act suit, the City of Richmond bears the burden of proof. Voting Rights Act § 5, 42 U.S.C. § 1973c (1970); *South Carolina* v. *Katzenbach,* 383 U.S. 301, 335; *Georgia* v. *United States,* 411 U.S. 526, 539. The District Court found that the City had not carried its burden with regard to either of the two propositions which it must prove. In reaching that ultimate finding, the Court examined the evidence, reviewed the history of the annexation in question, and adopted the largely undisputed findings of the Special Master whom it appointed to hear evidence.

The Court found that the City effectuated the basic annexation for an improper purpose and then illegally implemented it in violation of the Voting Rights Act. *Perkins* v. *Matthews,* 400 U.S. 379 (1971). The Court concluded that, given those facts, the City could not convince the Court that it had purged itself of its original discriminatory purpose unless it could demonstrate by substantial evidence "(1) that the ward plan not only reduced, but also effectively eliminated, the dilution of black voting power caused by the annexation and (2) that the city has some objectively verifiable, legitimate purpose for annexation." Appellant's Appendix, Page 20b. This was a reasonable requirement in light of the demonstrated purpose of the original annexation. That is, given the original intent of the City in effectuating the annexation, the Court naturally asked for more than mere empty words from the City. If the City did, in fact, have some valid, permissible reason for seeking approval of the annexation as modified, it should have been able to demonstrate it. Similarly, if the City sincerely wanted the annexation for valid, non-racial purposes, it would have undone the wrong which the annexation was intended to and

did accomplish. To require any less of the City would have been to condone its original illegal act.

The City failed to make either of the two showings sought by the Court. Although the intervenor Holt presented evidence which tended to show that the particular annexation in question hurt rather than helped the City economically, the City presented no evidence with regard to the alleged benefits to the City from the annexation. In the absence of evidence of such benefits, the Court could only conclude as did Judge Butzner in his dissent in *Holt I*, that there were no such benefits. *Holt* v. *City of Richmond,* 459 F.2d 1093, 1105-1106 [3] (4th Cir., 1972) *cert. denied* 408 U.S. 931.

With regard to the second showing which the City failed to make, the City's own witness, Mr. Oslin, testified that the ward plan adopted by the City was prepared without regard to the dilution of black voting strength caused by the annexation. Moreover, the evidence showed that the City's ward plan would result in a continued dilution of black voting strength when compared with an at-large system within the old boundaries of the City. The City's ward plan would have resulted in, at best, the election of only four City Councilmen who could be expected to represent black interests. The City further evidenced its lack of a true interest in eliminating the dilution of black voting strength when it completely ignored and attacked the ward plan suggested by the Crusade for Voters of Richmond. On the basis of this evidence, the District

[3] Although the Circuit Court reversed the District Court in *Holt I* it did not dispute the factual findings as to the intent of the City leaders in entering into a secret compromise of the annexation suit.



Court had no choice but to find that the City of Richmond had not sustained its burden with regard to showing the absence of any improper purpose.

The City suggests that the District Court has imposed an impossible burden upon it by, in accord with the clear wording of the law, requiring it to show both the absence of an impermissible purpose and the absence of an impermissible effect. In the context of a demonstrated original improper purpose it was reasonable for the Court to require the City to show that it had purged itself of such improper purpose by proving a valid purpose and by proving specific acts in the way of elimination of the results of the improper purpose. If the City had in fact purged itself of the impermissible purpose, it would have had no difficulty in meeting these requirements as was shown by the plan developed by the Crusade for Voters.

**2. The District Court Properly Found That the City Did Not Meet Its Burden of Proving That the Annexation Was Not Motivated by an Illegal Purpose.**

As noted above, the District Court held that Richmond had "the burden of proving that the annexation, as modified by the ward plan, (1) does not have the purpose of abridging black voting power and (2) will not have such an effect." Appellant's Appendix, page 9b. Richmond did not and does not challenge this burden of proof.

The City does, however, contend that the decision of the Fourth Circuit in *Holt I* should, in some unexplained manner, control this action with regard to the purpose of the City in attempting the annexation in question. This ignores the facts that:

1. The burden of proof in *Holt I* was on the plaintiff, Holt, et al., not on the City.

2. In *Holt I* the Court held that legislation, the annexation, which is constitutional on its face may not be stricken under the 15th Amendment because of suspect legislative motivation unless the legislative purpose is both obvious and constitutionally impermissible. The Court held that Holt had not proved that the purpose of the City in annexing a portion of Chesterfield County was both obvious and constitutionally impermissible. That holding has little to do with the question of whether Richmond could prove that the annexation had neither the proscribed purpose nor the proscribed effect.

3. There was evidence before the District Court in this action which was not before the District Court in *Holt I* indicating that the City not only was but still is motivated by an illegal purpose with regard to the annexation.

The case was referred to a Special Master who held a trial on the merits. During that trial, in an effort to conserve time and expense, the parties introduced the trial record from *Holt I*. Accordingly, the Master and the Court had the benefit of the evidence presented during the *Holt I* trial as well as the evidence presented directly to the Master. Based on this mass of evidence, the Master made findings of fact which, as noted by the Court, were generally not challenged by the parties. Those findings amply support the determination that the City did not carry its burden of proof.

The decision of the District Court below is not in conflict with the decision of the Fourth Circuit in *Holt I* because it is based on a different cause of action. The difference in the results reached by the two courts on the basis of similar evidence does, however, illustrate



that the Voting Rights Act is working as Congress intended. This Court discussed that intent in *South Carolina* v. *Katzenbach, supra,* at 328:

> Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims.

Although the City has proved itself a master of using obstructionist tactics even today, the Voting Rights Act has been vindicated by the decision of the District Court in this action. The essence of the City's appeal in this case is that it does not like the Voting Rights Act. The effect and constitutionality of that act are now well settled.

### 3. The District Court Properly Claimed But Did Not Exercise Authority To Effect De-annexation.

The Voting Rights Act required the City of Richmond to obtain approval of the annexation in question before implementing it. The City ignored this requirement and now complains because the Court indicated that it could, although it did not actually do so, frustrate this illegal action by ordering that the City surrender the annexed territory. The position of the City seems to be that the Court lacks authority to implement the congressional policy underlying the Voting Rights Act. Although the Court clearly does have such authority, its statements in this regard were only dicta. In fact, the Court, out of respect for and

comity with the District Court for the Eastern District of Virginia, refrained from exercising such authority.[4] The Court entered no order in this regard from which the City can appeal.

**4. In Determining Whether the City Had Met Its Burden of Proof the Court Properly Inquired as to the Possible Benefits of the Annexation.**

As discussed above, the City of Richmond had the burden of proving that the annexation, as modified by its nine-ward plan, was not improperly motivated. Since it was established that the original annexation was improperly motivated, the City had to show that it had purged itself of such improper purpose. The Court recognized that it is difficult to directly prove a negative but quite feasible to prove a negative indirectly by establishing the opposite of the negative. Accordingly, the Court required Richmond to prove the existence of a valid purpose for the annexation. That is, the only possible reason for continuing the annexation apart from improper racial purposes would be the existence of some sort of economic or administrative benefits flowing from the annexation. In the absence of proof of such a valid purpose the Court could only conclude that the improper purpose still controlled.

The City of Richmond claims that the duly constituted Virginia annexation court is the only proper

[4] The exercise of such authority should not produce the difficulties which the City predicts. The territory in question was efficiently transferred from Chesterfield County to the City of Richmond in 1970. There is no reason why a retransfer should produce even as many problems as the original transfer. The Special Master found that Chesterfield County is ready, willing and eager to reassume jurisdiction over the annexed territory.



forum for determining whether the annexation is beneficial. This ignores the fact that the annexation in question was the product of a compromise agreement submitted to the Court in an off-the-record chambers conference. As pointed out by Judge Butzner dissenting in *Holt I*, "Virginia's annexation laws, though fair on their face, were deliberately used to debase the votes of the black citizens of Richmond." 459 F.2d at 1100. The annexation in question, rather than the annexation originally proposed by the City of Richmond, has never been shown to be beneficial to the City of Richmond. If the annexation is in fact of benefit to the City, the City should have no difficulty in establishing such fact. This is particularly true in light of the four and one-half years of experience which this city has had in governing the illegally annexed territory. The complete failure of the City to present such evidence suggests that the annexation may, in fact, not be of benefit to the City. Since the City is presently controlled by the same group of men who entered into the compromise annexation in order to keep blacks from gaining control of the City Government, if no valid purpose for continuing the annexation can be shown, it is reasonable to assume that those men wish to continue the annexation for the same invalid purpose.

**5. The Judgment of the District Court Was Based Upon the Evidence Before It Rather Than on the Contentions of the Parties.**

The City of Richmond initially asked the Attorney General to declare that the annexation had neither the proscribed purpose nor the proscribed effect. The Attorney General could not, and did not, so declare. The City then petitioned the District Court for a

declaratory judgment to such effect. During the pendency of this action the City amended its complaint to ask that the annexation, as modified by a ward plan, had neither the proscribed purpose nor the proscribed effect. The Attorney General then, in his status *as a party* to the action, indicated that he did not oppose such a declaration. The other parties to the action, however, the Crusade for Voters of Richmond and Holt, did object. The Court properly resolved the conflict among the parties by holding a trial on the merits and entering a decision based upon the evidence received at the trial. The position of the City is that the Court should have ignored the evidence and the contentions of two of the parties and entered judgment for the City merely because the Attorney General, *as a party* to this action, did not object to the amended relief sought by the City. That would have been clear error. Actions must be decided on the facts, not merely on the unsupported allegations of the parties.

**6. Holt I Involved a Different Cause of Action and Therefore Was Not Entitled to Either Res Judicata or Collateral Estoppel Effect.**

The City of Richmond contends that the decision of the Fourth Circuit in *Holt I* is entitled to either *res judicata* or collateral estoppel effect in this action. The City errs in this contention because *Holt I* involved a different cause of action and different elements of proof than does the instant case. As the Supreme Court pointed out in *Lawlor* v. *National Screen Service Corp.*, 349 U.S. 322, 326, relied upon by the City, "Under the doctrine of *res judicata*, a judgment 'on the merits' in a prior suit involving the same parties or their privies bars a second suit based upon the same cause of action." The Fourth Circuit itself recognized that an



action under the Voting Rights Act involves a different cause of action than did *Holt I:*

> We have no jurisdiction to consider any problem arising under that act, and what we have said reflects no opinion as to the appropriateness or inappropriateness of the Attorney General's objection. 459 F.2d 1093, 1100.

In addition to being a different cause of action, two of the parties in the instant case were not party to, or in privity with parties to, the *Holt I* action. Therefore, *res judicata* cannot apply.

The doctrine of collateral estoppel is not applicable because the issue before the District Court in this action involved different legal rules and a different burden of proof than did *Holt I* under the decision of the Fourth Circuit. The limitations of the doctrine of collateral estoppel have been developed by the courts in cases involving tax fraud. In *Neaderland* v. *Commissioner,* 424 F.2d 639, 642 (2nd Cir., 1970), *cert. denied,* 400 U.S. 827, the Court discussed collateral estoppel:

> This doctrine has been developed by the judiciary as a "reasonable measure calculated to save individuals and courts from the waste and burden of re-litigating old issues." * * * Collateral estoppel is confined, however, to "situations where the matter raised in the second suit is identical in all respects with that decided in the first proceeding and where the controlling facts and applicable legal rules remain unchanged." * * * Even if the issue is identical and facts remain constant, the adjudication of the first case does not stop the parties in the second, unless the matter raised in the second case involves substantially "the same bundle of legal principles that contributed to the rendering of the first judgment." [Citations Omitted]

The court held, following *Helvering* v. *Mitchell,* 303 U.S. 391, that the acquittal of a taxpayer on charges of criminal tax fraud would not bar the government from later proving, in a civil action, that the taxpayer had committed fraud. The court stated,

> "When a jury acquits, it decides only that an accused is not proven guilty of the offense charged beyond a reasonable doubt, and the Commissioner is not foreclosed thereby from attempting to show fraud in the civil counterpart against the same defendant by a fair preponderance of the evidence. *Helvering* v. *Mitchell, supra,* 303 U.S. 397, 398, 58 S. Ct. 630. This burden of proof factor alone is sufficient to demonstrate that the "bundle of legal principles" applicable in a civil suit differs significantly from that in a criminal trial. 424 F.2d at 642.

As pointed out above, the decision in *Holt I* was based upon a finding that the plaintiff had not proved that the purpose underlying the annexation was obviously constitutionally impermissible. Under the Voting Rights Act the burden of proof is on the City and the issue is whether the City can prove that it did not have the proscribed purpose in undertaking the annexation and that the annexation did not have the proscribed effect. Thus both the burden of proof and the legal issues are different in this case from what they were in *Holt I.* The doctrine of collateral estoppel is not applicable.

**7. The District Court Properly Found That the Effect of the Annexation in Question Was To Deny the Right To Vote on Account of Race.**

The City of Richmond asked the District Court to declare that the annexation of a portion of Chesterfield County, as modified by a particular nine-ward plan, did



not have the effect of denying or abridging the right to vote on account of race or color. The City conceded that the annexation had the effect of diluting the black vote but contended that its adoption of the nine-ward plan avoided the dilutive effect of the annexation. The District Court indicated, following *City of Petersburg, Va.* v. *United States,* 354 F. Supp. 1021, 1024 (1972), *affirmed,* 410 U.S. 962, that if the City changed from an at-large system for electing its City Council to a ward system "calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters" the annexation could be approved. The District Court found, however, that the evidence showed that the plan adopted by the City did not so neutralize the effect of the annexation. Although there was ample evidence on which the Court could reach such a conclusion, two facts in particular compelled it: First, the City did not even attempt to minimize dilution in drawing its plan. Second, the Intervenor, Crusade for Voters of Richmond, presented a plan which involved far less dilution of the black vote than did the City's plan.

Contrary to the assertion of the City, the District Court did not hold that any annexation which has a dilutive effect on black voting rights must be prohibited. It did hold, however, that concrete facts rather than empty words must be presented before an annexation which has the initial effect of diluting black votes can be declared to not have the effect of denying or abridging the right to vote on account of race. The City of Richmond did not present such facts.

## CONCLUSION

The District Court correctly interpreted and applied the Voting Rights Act. Although it could have ordered elections immediately it did not err when, out of comity for the Eastern District of Virginia, it refrained from entering such an order. The City has not presented any substantial question. The decision of the District Court should be affirmed.

Respectfully submitted,

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Washington, D. C. 20006

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P.O. Box 608
Charleston, South Carolina 29402

*Attorneys for Appellees, Crusade for Voters of Richmond, et al.*

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

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No. 74-201

---

CITY OF RICHMOND, VIRGINIA,
Appellant,

v.

UNITED STATES OF AMERICA and
WILLIAM B. SAXBE, ATTORNEY GENERAL, and

CURTIS HOLT, SR, et al. and
CRUSADE FOR VOTERS OF RICHMOND, et al,
Appellees.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLOMBIA

---

MOTION TO DISMISS OR AFFIRM

---

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Curtis Holt Sr., et al.

IN THE SUPREME COURT OF THE UNITED STATES

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No. 74-201

CITY OF RICHMOND, Virginia — Appellant

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UNITED STATES OF AMERICA AND

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CURTIS HOLT, SR., ET AL., AND

CRUSADE FOR VOTERS OF RICHMOND, ET AL. — Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MOTION TO PROCEED IN FORMA PAUPERIS

Comes now the plaintiff, Curtis Holt, Sr., and moves the Court to allow him to proceed in Forma Pauperis with his complaint without the necessity of fees, costs, or giving security therefore pursuant to 28 U.S.C. § 1915, and further ask that W.H.C. Venable, Caskie House, 422 East Main Street , Richmond, Virginia, be appointed to represent me as having prior knowledge of my complaint and having represented me prior in related litigation.

CURTIS HOLT, SR.

CURTIS HOLT, SR.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

No. 74-201

CITY OF RICHMOND, Virginia — Appellant

v.

UNITED STATES OF AMERICA AND

WILLIAM B. SAXBE, ATTORNEY GENERAL, AND

CURTIS HOLT, SR., ET AL., AND

CRUSADE FOR VOTERS OF RICHMOND, ET AL. — Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLOMBIA

AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS

I, Curtis Holt, Sr., being first duly sworn, depose and say that in support of my motion to proceed without prepayment of fees and costs therefore, I state that because of my poverty I am unable to pay the fees, costs or give security therefore of said proceedings; I believe I am entitled to the redress I seek; and I further swear the responses which I have made to the questions and instruction below relating to my ability to pay are true.

Q. Are you presently employed?

A. No. The date of my last employment was December 1954 for albemarle paper company at an average wage of 365.50 per month.

Q. Have you received in the past 12 months any income from a business, profession, or other form of self-employment, or in the form of rent payments, interest, dividends, or other source?

A. I have received payments for disability on Social Security averaging 208.00 per month. Additionally I have received 150.00 total for service to the Richmond Model Neighborhood Program.

Q. Do you own any cash, checking or savings accounts?

A. No.

Q. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property?

A. I am paying for a 1970 Ford Fairlane on which I owe approximately 2,200.00 and don't own anything else of value.

Q. List the names of your dependants.

A. Alto Mae Holt-wife; Curtis Holt, Jr.-child; Constance Denise Holt-child; Sir Walter Valentino Holt-child.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

CURTIS HOLT, SR.

CURTIS HOLT, SR.

Subscribed and sworn to before me this 4th day of October, 1974.

Notary Public

My commission expires: 4/5/78

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

No. 74-201

CITY OF RICHMOND, Virginia — Appellant

v.

UNITED STATES OF AMERICA AND

WILLIAM B. SAXBE, ATTORNEY GENERAL, AND

CURTIS HOLT, SR., ET AL, AND

CRUSADE FOR VOTERS OF RICHMOND, ET AL. — Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MOTION TO DISMISS OR AFFIRM

Curtis Holt, Sr., et al, move pursuant to Supreme Court Rule 16 (1) (a) and (c), that this appeal be dismissed or, in the alternative, that the judgment of the District Court in this case be affirmed.

OPINION BELOW

The order and opinion of the District Court below are attached to Appellant's "Jurisdictional Statement" as Appendices A & B thereof. Also attached thereto are the Findings of Fact and Conclusions of law of the Special Master as Appendix C.

## JURISDICTION

The Order of the District Court was entered on June 6, 1974, in accordance with its opinion dated May 29, 1974. A Notice of Appeal was filed on July 15, 1974. The jurisdiction of this Court was invoked under 28 U.S.C. 1253.

## QUESTION PRESENTED

Whether the District Court properly found that Appellant had failed to demonstrate satisfactorily in its declaratory judgment suit under §5 of the Voting Rights Act (42 U.S.C. 1973C) that the compromised annexation (even as modified) of a county adjacent to the City of Richmond did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color.

## STATEMENT

The relevant facts are recounted in the opinion of the District Court (J.S. App. 9b-38b) and the Findings of Fact of its specially appointed master (J.S.App. 1c-12c).

It suffices to add here that an examination of the Master's and the lower Court's findings of fact as compared to Appellant's suggested statement of the case reveals the self serving nature of the entire jurisdictional statement. Appellant even refers by footnotes to evidence not in the record nor anywhere corroborated.

The factual setting is simple. The white power structure of Richmond was fearful of losing control over city government because of the growth of black voting strength. They purposely compromised an annexation to quickly secure 45,000 new white citizens in time to dilute the black vote enough to maintain control. There were no other reasons for the compromised annexation.

The Appellant then knowingly failed to seek Section 5 approval. Appellee filed a 15th Amendment suit to challenge



their disenfranchisement. On appeal the 4th Circuit after first specifically excluding any Section 5 considerations, reversed the District Court. Appellees re-activated their separately filed Section 5 suit and sought to enjoin any further elections. This Court granted that injunction in April of 1972. Days before the motion for summary judgment was to be heard in that Section 5 suit appellant filed for approval in the court below in this action. The Section 5 local District Court stayed action on the motion for summary judgment pending a decision by the court below in this action. After the taking of extensive evidence, and its consideration, by a Special Master and the court below, appellants belated request for approval of its voting change was denied.

The Holt Appellees action in the local District Court to enjoin further enforcement of the annexation (now supported by the fact that the City had failed to win approval from the Court below) is still pending.

## SUMMARY OF ARGUMENT

### THE QUESTIONS ARE NOT SUBSTANTIAL

The Appellant's protestations to the contrary, the Questions raised on appeal are not substantial and do not demand plenary review.

The simple fact is that upon voluminous evidence reviewed by both a master and the three-judge court, the appellant failed utterly to meet its burden of proof under Section 5, relative not only as to the purpose and effect of the annexation but

also as to the purpose and effect of the annexation as modified by a word plan.

The reason no elections are being held is because the appellant has flouted the law by implementing the change without approval. This Court has had to enjoin appellant's attempts to hold elections until it has gained Section 5 approval. Now, having failed to gain approval they seek to use their own wrongdoing, i.e., implementation without approval, as a reason for review.

In fact, the "procedural morass" is a ploy still being employed by the Appellant to maintain illegal control of the City government.

In addressing itself to error in the record below it is interesting to note the total lack of argument by Appellant to any error in the factual findings of invidious purpose and effect. Complaint by appellant of an "extra burden" seems hollow indeed when Appellant actually failed to meet even the simplest of burdens.

Further, Appellant's complaint that the Court had no jurisdiction to de-annex is of no moment here because the lower Court did not order de-annexation.

Appellant claims that "legitimate annexations" can stand where dilution is "incidental" and then assigns as error consideration of the very facts which proved that this annexation was illegitimate in that its effects were not incidental but invidiously deliberate.

Finally, Appellant seeks to claim as res judicata a Fourth Circuit ruling which by its own terms specifically excluded any possible effect upon issues raised under Section 5 of the Voting Rights Act.



ARGUMENT

1. There is no merit to a request for review because failing to carry a burden of proof complicates Appellants' original wrongdoing.

As the District Court below noted in its opinion (J. S. 1c-12c, App 37b) there is currently pending in the District Court for the Eastern District of Virginia an action brought by appellees Holt, et al., seeking a summary judgment to prevent implementation of the change on the grounds that the compromised annexation in question was without effect for lack of prior approval by the Attorney General or the-District Court below sitting pursuant to 1973c. That Court has witheld judgment on the question pending approval being secured or denied appellants in the court below. Having failed to gain approval, the appellants have sought and secured a further continuance of any decision by that court. (Appendix A).

While appellant refers to itself thus as being "enmeshed in a procedural morass," any such morass is of its own making. Allen v. State Board of Elections, 393 U.S. 544, 567, eliminated beyond a doubt for all but the most disingenuous or quixotic that annexations were changes in voting practice or procedure within the meaning of §5 of The Voting Rights Act.

The anomalous situation in the instant case resulted solely because the appellant arrogantly ignored the Allen decision and instituted its compromised annexation without first seeking prior approval as required by the Act. The record of the Court below is replete with evidance that appellant instituted the compromised annexation for the very purpose of diluting (and thereby denying and abridging) the voting potential of its Black citizens (J. S. App. 10b-13b) and thereby achieved that prohibited effect (J. S. App. 14b, 19b, 23b-30b). In those thoroughly tainted circumstances, it is obvious that the appellant did not need either Allen, supra, or Perkins v. Matthews, 400 U.S. 379 to inform it that its instituted change in voting practice was in violation of §5.

Put simply, one cannot have gone about the business of instituting a change in voting practice for the purpose of diluting the Black vote and thereafter credibly maintain that it had been acting in ignorance of the requirements of §5. The anomalous situation presented to the Court by Appellant results from its own knowing, flagrant wrongdoing. Appellees Holt, et al respectfully suggest that the solemn jurisdiction of this Court should not be invoked simply because patent and flagrant wrongdoing by the appellant has resulted in a temporary anomaly.

2. The District Court properly concluded that the Appellant's belatedly adopted ward did not remove the dilution of Black voting power caused by the compromised annexation or demonstrate that it had abandoned its discriminatory purpose.

In Georgia v. United States, 411 U.S. 526, 531 (1973) this Court noted that §5 concerns itself "with the reality of changed practices as they effect Negro voters." The evidence suggested and the Master and Court below found "... there is significant and widespread voting by Blacks for Black candidates and by Whites for White candidates in the City of Richmond...." (J.S. App. 10c and 7c).

Even the appellant tacitly admits that its ward plan would leave the Black voters a maximum of four (4) of the City of Richmond's nine (9) councilmanic seats. While it is true that prior to the illegal institution of the covert, compromised annexation by appellant, Blacks constituted only 44% of the voting age as shown by a 1970 census, the percentage of Blacks in the total population was greater than the percentage of whites in the total population and would (as the court found), if indeed it has not already done so, in a few years translate itself into a voting-age majority (J.S. App. 23b-24b). Further, appellant's ward system guarantees a white-controlled City Council while there "... is good reason to think that Blacks would have a genuine opportunity to elect five councilmen



within Richmond's old boundaries than in a ward system operated within the [illegally] expanded boundaries." (J.S. App. 25b-26b).

Moreover, in passing upon both the purpose and effect of the appellant's belatedly adopted ward plan, the Court below could not ignore that another intervenor, The Crusade for Voters, in order to illustrate the appellant's mala fides, had conceived a ward plan that went much further than appellant's plan in preserving Black voting strength. (J.S. App. 29b-30b). The contrast between the relative effectiveness of these two plans, without more, warranted the finding of the Court below ". . . that the white political leadership presently in control of Richmond adopted the ward system for the purpose of doing what they could to maintain the dilution of the Black vote produced by annexation." (J.S. App. 26b-27b).

The invocation of the Petersburg annexation , City of Petersburg, Va. v. United States, D.C.D.C., 354 F. Supp. 1021, 1027 (1972), aff'd, 410 U. S. 962 (1973), by appellant is the legal equivalent of a sacrilege: the Petersburg annexation was favored by a substantial majority of its Black citizens (unlike the case here as evidenced by the positions of the Black intervenors, appellee's see appendex B) for objectively verifiable financial and geographic interests and was pursued without any purpose of diluting the Black vote. (J.S. App. 18b). Further, the district Court in Petersburg found that that city had "expanded into those areas which were most reasonably available and which were the most desirable for accomplishing the legitimate purposes of annexation." City of Petersburg, Va. supra 354F. Supp. at 1024.

By contrast, the court below found there are no demonstrable beneficial financial or geographic interests served by the instant compromised annexation. Its finding here was hardly surprising since the record discloses that in its secret, white-controlled compromise negotiations appellant concentrated solely on the

number of new white voters it desired to obtain to the exclusion of any legitimate considerations.

Further, the ward plan proposed by appellant as a remedy for its illegally implemented change in voting practice was drawn without reference to the racial living patterns in Richmond by an individual whose only direction from appellant was to "keep the wards within a four to five per cent variance from population equality." (J.S. App. 28b). Appellant's deliberately maintained ignorance of its racial living patterns in drawing its ward plan is most telling evidence of its utter lack of sincerity in attempting to correct the diluitive effect of the compromised annexation.

3. The Enunciation by the Court Below of Authority to Effect De-Annexation Raises No Justiciable Issue Since The Court Below Did Not In Fact Order De-Annexation

While the Court below correctly noted that there were compelling equities favoring de-annexation, it refrained for the time being from ordering that remedy and remanded the Holt appellees to the pending action in the United States District Court for the Eastern District of Virginia. Inasmuch as the district Court below did not order de-annexation, appellant's complaint thus raises no justiciable issue.

4. The District Court Acted Properly in Considering The Lack of Economic and Administrative Benefits of Appellant's Illegally Implemented Change in Voting Procedure.

The mandate of Section 5 is such that the Court below had to deny approval of the annexation when the appellant failed to prove it did not have the purpose and effect of abridging the black vote on account of race or color. Such a determination by its very nature necessitated a consideration of just what motives did exist.



When considered in conjunction with all the other evidence of invidious racial purpose, the absence of any compelling economic and administrative benefits for the compromised annexation was cogent evidence that this change in voting practice was implemented solely for the purpose of diluting black voting power. By the same token, had the appellant been able to demonstrate that there were compelling, or even attractive, economic and administrative benefits accuing from the illegally implemented change in voting procedure, it would have dispelled pro tanto the otherwise overwhelming evidence of prohibited and invidious racial purposes.

Thus, the lack of evidence of economic and administrative benefits for the annexation underscored and corroborated the other evidence in the case which "mandated" the finding that the appellant in the compromise negotiations had expressed no concern over any subject except the number of new white voters it could capture in order to dilute the black vote and maintain white control. While even a "good" annexation cannot make an impermissable voting change valid, the evidence that this annexation was "bad" from an economic and administrative point of view was highly relevant to the issue of the appellant's impermissible purpose.

In Petersburg, supra, (upon which appellant futilely relies elsewhere) careful consideration was given to the absence of any evidence that that particular annexation was undertaken for any but legitimate financial geographic, and administrative purposes. (J.S. App. 18b). That evidence went a long way toward convincing the Petersburg Court that no impermisible purpose existed for its annexation.

5. The Record Plainly Indicates That The Court Below Did Not "Ignore" The Attorney General's Approval of Richmond's 9-Ward Plan

There is no evidnece at all that the Court below ignored the approval given by the Attorney General to the appellant's 9-Ward plan.

However, as Allen v. State Board of Elections, 393 US 544 (1969) clearly envisioned, the Attorney General can be expected, from time to time, to be less than vigilant. The record before this Court indicates that the Attorney General's belated acquiesence to the City's proposed ward plan in spite of the overwhelming evidence of racial purpose, was a direct result of just such a lack of vigilance.

As the Court below recognized, it did not sit simply to rubber stamp the bad judgement of the Attorney General, but rather its responsibility was " . . . no less than to insure realization of the Fifteenth Amendment's promise of equal participation in our electoral process." (J.S. App. 46, Citing Allen v. State Board of Elections, supra Note 3, 393 U.S. at 556). Once the jurisdictional period has expired, the Attorney General's "approval", i.e., failure to object to the annexation, is without legal effect and can in no wise prevent an independent judicial scrutiny of the voting change. This is especially true where that voting change has been implemented prior to its consideration by the Attorney General or the District Court in blatant disregard of the clear requirements of Section 5.

6. Holt I Cannot Be Given Either Res Judicata or Collateral Estoppel Effect in this Case

The District Court in Holt I (Holt v. City of Richmond, E.D. Va., 324 F. Supp. 328 (1971), reversed, 4 Cir., 459 F. 2d 1093, cert. denied, 40 U.S. 931 (1972), made extensive



and thoroughly documented findings of fact that the annexation at issue was for the purpose of denying and abridging the right of blacks to vote on account of their race. Not a single finding of fact was overturned by the Court of appeals. The holding of that Court was simply, in its own words:

> "Facially constitutional legislation may not be stricken because of respect legislative motivation."

In other words, the Fourth Uircuit held that in a pure Fifteenth Amendment suit the motive of legislative acts (e.g., the pursuit of a Compromised annexation by appellant's City Council) was irrelevant. By contrast, however, in a suit of Section 5 of the Voting Rights Act the motive behind legislation affecting a change in voting procedure is the central issue. The Fourth Circuit itself recognized this point in stating:

> We have no jurisdiction to consider any problem arising under that [42 U.S.C. 1973C] Act.

As Judge Winter of that Court noted in his lucid dissent:

> The opinion of the majority may be read in vain for any adequate discussion of these findings and any demonstration that they are clearly erroneous. . . the majority simply takes the position that the evidence to support them is extraneous to the issue.

Thus neither the doctrine of collateral estoppel nor that of Res Judicata is germane to the instant case since the findings of fact by the district court were never successfully challenged and the legal issue as defined by the Fourth Circuit in Holt I was wholly different from that prescribed in a suit under Section 5 of the Voting Rights Act:

> For there to be an indentity of causes action within the meaning of the doctrine of Res Judicata, it has been held that the degree of proof required in the second action must be at least as great as that required to support recovery in the first action, and that if the degree of proof required in the first action is greater than that required in the second, the cause of action cannot be held to be the same. (Am Jur, Judgments, sec. 414, pp. 580-81).

In the initial Holt suit, the burden was upon Holt, et al., as plaintiffs, to prove their case by at least a preponderance of the evidence. Further, under its own interpretations of Fifteenth Amendment law, the Court of Appeals held that even proof of invidious legislative motive would not cause "facially constitutional" legislation to be stricken. While this motivation may have been irrelevant in the context of that Fifteenth Amendment case, it is highly relevant, and indeed The central issue, in the context of the present suit under Section 5 of the Voting Rights Act. "It is well established that a declaratory judgment action under Section 5, the plaintiff State [here the City of Richmond] has the burden of proof." Georgia v. United States, No. 72-75, p. 11 (May 7, 1973).

The United States Supreme Court in Allen spoke to the inadequacy of Fifteenth Amendment remedies in stating:

> "Of course the private litigant could bring suit under the Fifteenth Amendment. But it was the inadequacy of just these suits for securing the right to vote that prompted Congress to pass the Voting Rights Act." Allen v. State Board of Elections 393 U.S. 544, 556, footnote 22, quoting from South Carolina v. Katzenbach, 383 U.S. 301, 309 (1966).

Thus, even under the most liberal application of the rules, the admittedly inferior and inadequate Fifteenth Amendment remedies cannot be res judicata to an additional remedy and suit under the Voting Rights Act.

7. Rulings Which Deal With "Incidental Voting Changes Resulting from Legitimate Annexations" Do Not Apply to this Case

Applicant's selfserving designation of this annexation as "legitimate and necessary governmental action" with resultant "incidental dilution" does not escape the propriety of the lower Court's finding to the contra.

This is a case of an illegitimate annexation resulting in deliberate invidious voting changes. Such a finding of fact



was "mandated" and appellant has consistently failed to point in the record below to any indication that such a finding was erroneous.

## CONCLUSION

The Court below did not err in any respect in its construction of or application of Section 5 of the Voting Rights Act. The Appellant's arguments have pointed to extraneous issues, non-issues and phantoms, revealing only the paucity of merit in their complaint.

For the reasons stated above the present appeal should be dismissed or, in the alternative, the judgments of the District Court should be affirmed.

Respectfully submitted,

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APPENDIX A

FILED
OCT 1 1974
CLERK, U. S. DIST. COURT
RICHMOND, VA.

Recd 10-2-74

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

| | | |
|---|---|---|
| CURTIS HOLT, SR., | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| v. | ) | CIVIL ACTION |
| | ) | NO. 695-71-R |
| CITY OF RICHMOND, et als, | ) | |
| | ) | |
| Defendants. | ) | |

O R D E R

This September 12, 1974, came again the parties, by counsel, to argue the motionsof (a) the City of Richmond for a further stay of these proceedings until the Supreme Court of the United States has acted upon and made disposition of the petition for appeal to that Court filed by the City to the judgment order of a Three-Judge Court of the District Court for the District of Columbia Circuit, and (b) plaintiff for summary judgment. And thereupon came Crusade For Voters of Richmond, Virginia, by counsel, who on September 10th forwarded to this Court a petition to intervene, and moved the Court to permit such intervention. Upon mature consideration of the petition and motion, it is ORDERED that Crusade For Voters of Richmond, Virginia, are granted leave to appear amicus curiae, and leave is granted it to file a brief within 7 days from this date, which brief has now been filed.

On September 10th, Donald O. Sutton filed a



motion to intervene in this action, but failed to appear on September 12th to present the same to the Court. It is ORDERED that his motion is denied.

And the Court having heard argument on the above motions, and having ordered a transcript of the argument prepared, this cause is continued.

United States Circuit Judge

United States District Judge

United States District Judge

September 25, 1974.

Supreme Court, U. S.
FILED
OCT 21 1974
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-201

CITY OF RICHMOND, VIRGINIA,

*Appellant,*

v.

UNITED STATES OF AMERICA and
WILLIAM B. SAXBE, ATTORNEY GENERAL, and
CURTIS HOLT, SR. *et al.* and
CRUSADE FOR VOTERS OF RICHMOND, *et. al.*,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

## APPELLANT'S REPLY MEMORANDUM

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Holt v. City of Richmond, *et al.*, 334 F. Supp. 228 (E.D. Va. 1971), *rev'd*, 459 F.2d 1093 (4th Cir. 1972), *cert. denied*, 408 U.S. 931 (*Holt I*) ..... 9, 10

Perkins v. Matthews, 400 U.S. 379 ..... 8

*Statutes:*

Section 5, 42 U.S.C. §1973c Voting Rights Act of 1965, as amended, (1970) ..... *passim*

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

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No. 74-201

---

CITY OF RICHMOND, VIRGINIA,

*Appellant,*

v.

UNITED STATES OF AMERICA and
WILLIAM B. SAXBE, ATTORNEY GENERAL, and
CURTIS HOLT, SR. *et al.* and
CRUSADE FOR VOTERS OF RICHMOND, *et. al.*,

*Appellees.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

## APPELLANT'S REPLY MEMORANDUM

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This Memorandum is filed in reply to the Motion to Affirm of Appellee Crusade for Voters of Richmond (Crusade) and the Motion to Dismiss or Affirm of Appellee Curtis Holt, Sr. (Holt).

## I.

**THE ATTORNEY GENERAL OF THE UNITED STATES NOT ONLY APPROVED THE PLAN SUBMITTED BY THE CITY OF RICHMOND, BUT IN FACT HELPED PREPARE THE PLAN, AND STATED IN THE COURT BELOW THAT THE PLAN SUBMITTED BY INTERVENOR CRUSADE FOR VOTERS WENT BEYOND THE REQUIREMENTS OF THE ACT.**

In stating that the Attorney General "did not oppose" the declaration sought by Appellant, and "failed to object" to Appellant's nine-ward plan, both the Crusade and Holt have inaccurately described the actions of the Attorney General. The plan was not only approved by the Attorney General, but was prepared in part by his department.

The Attorney General, in his "Motion for Modification of the Master's Report" filed before the Court below, stated at page 14, regarding the City's ward plan, that "although the original enlargement of the at-large voting system was impermissible, the shift to the present ward plan was designed to, and did, cure that defect."

Earlier, at page 8, the Attorney General made the following comment:

> "Although it is true that Oslin testified he did not consider racial factors in drawing the plans, . . .[for the City of Richmond], it is not true that the City made no attempt to minimize the dilution of the black vote caused by annexation. Oslin was a



technical expert and was asked to use that technical knowledge to draw several plans. Several of those plans were then presented by officials of the City to the United States, and the City asked the help of the United States in fashioning a ward plan which would minimize the dilution of black voting strength.

"Suggestions were made by the Department of Justice. . . . Those suggestions were made by the Department of Justice, and accepted and adopted by the City, in an effort to minimize the dilution of the black voting strength in the manner directed by *Petersburg v. United States* in order to meet Constitutional and Voting Rights Act requirements. . . . After the plan was adopted by the City Council, it was incorporated in a proposed Consent Decree agreed to by the City and the United States."

Therefore, Appellee Crusade is just plain wrong when it states that the Attorney General "did not object to the amended relief sought by the City." (Crusade, Motion to Affirm, at 14). Appellee Holt is equally inaccurate in referring to the Attorney General's "belated acquiescence" and "failure to object". (Holt Motion to Dismiss or Affirm, at 10). In fact, the Attorney General affirmatively proposed the acceptance of the City's Ward Plan as meeting all the requirements under the Voting Rights Act.

With regard to the proposed ward plan of Appellee Crusade, the statement of Counsel for the Attorney General to the Court below in oral argument of March 20, 1974, beginning on page 21 of the transcript of the hearing, accurately describes the position of the United States.

JUDGE WRIGHT: Before you finish, would you address yourself to the Crusade Plan?

You have a reference in your brief, a footnote reference, which indicates the difference between what the Crusade proposes and what you have approved. Would you address yourself to that difference?

MR. BIXLER: Yes, your Honor.

If you have resolved all the other questions and you just come down to the question, and you are focusing on this swing ward of Ward H, under our plan, 41 percent of the people are black. Under their plan, it is something like 57 or 59 percent. And if you get down to the question of which is stronger Negro voting strength, of course 59 is larger than 41. I think it is true that that—we are going in a certain direction back towards restoring Negro voting strength when we drafted the nine-ward plan that was presented to the court.

It is clear that the Crusade Plan goes in that same direction and goes further.

There is a real question of whether the City is required or whether we can require the City



to go that far. When the court in *Petersburg* said to the maximum extent possible, I don't think they meant racial gerrymandering the other way.

That is, if it were possible to draw up a nine ward plan, I guess mathematically it would be possible to draw one up with eight black majority wards, perhaps nine. The districts might look sort of funny, but it might be possible to do that.

I don't think the *Petersburg* statement that you must go to the maximum extent possible means that you have to absolutely maximize Negro voting strength, and

JUDGE WRIGHT: Would it help purge also purpose —illicit purpose which there was in this case unquestionably, which you found initially?

MR. BIXLER: Yes, it would, your Honor, but just as the ward plan which the City adopted did cure purpose as it cured effect. I still don't think there is any different standard for curing a constitutional wrong, whether you have found effect or purpose or both of them.

The law of Section 5, is that you put them back, that you erase, that you wipe out that change

which had the effect of taking away constitutional rights.

There is a real question of whether we can ask the City to do more than that.

In this case, the City has chosen to go further than deannex, and so we welcome that and we think it is a proper remedy for this case.

## II.

## APPELLEE CRUSADE'S MOTION TO AFFIRM PRESENTS A COMPLETE CHANGE OF POSITION REGARDING POSSIBLE DE-ANNEXATION.

In the Court below, Appellee Crusade was properly concerned about the disastrous effects of de-annexation upon the entire population of Richmond. While these effects are ignored in its instant motion, they remain none the less real.

In its brief of February 4, 1974, objecting to the Master's Report, filed below, Appellee Crusade stated, at page 3:

> "The reality is that the Special Master's conclusion hurts black voters in Richmond for two fundamental reasons:
>
> 1) As a practical matter because of the comparative population and registration figures by race in the old city, and because of the realities of



> at-large elections, black voters in Richmond stand a better chance of exercising real influence with their votes under a fairly drawn ward election system—even with additional white voters—than under at-large elections;
>
> 2) To the extent that Richmond's black voters do exert influence in the governance of their city, it is no great gain to exercise influence in a worn-out shell, which does not have the room, nor financial resources to provide a good life for its citizens."

With reference to the Master's recommendation of de-annexation, the brief, at page 2, took issue with the Master's Report because "The result was a decision which sacrifices the real voting interests of live black voters in the City of Richmond in order to preserve the Voting Rights Act as an abstraction."

Further, at page 7 of the same brief, Appellee Crusade described the disastrous effects of a de-annexation decree upon the Richmond Public Schools.

These reasons remain viable. Nevertheless, Appellee Crusade now states, in its Motion to Affirm, at 6, that the result of the decision below is that the City must now de-annex the territory involved. Again, this position is that recommended by the Master, and does, indeed, ignore the facts. Any such result will not increase black voting strength, but will deny black voters a real voice in the City's government.

## III.

## APPELLANT'S RELIANCE UPON *PERKINS v. MATTHEWS* AS BRINGING ANNEXATIONS WITHIN THE VOTING RIGHTS ACT WAS REASONABLE AND PROPER.

Both Appellees, Crusade and Holt, refer to Appellant's "illegal" annexation and "illegal" election in 1970. These assertions are completely devoid of support in the record.

Immediately following this Court's decision in *Perkins v. Matthews*, 400 U.S. 379, Appellant began its continued efforts to gain approval of the voting changes caused by the annexation. Appellee Holt continues to state that *Allen v. Board of Education*, 393 U.S. 544, foresaw *Perkins* and made plain "beyond a doubt" that annexations were covered by the Act. (Holt, Motion to Dismiss or Affirm, at 5). *Allen* did no such thing. Indeed, two members of this Court did not so construe *Allen* when the *Perkins* decision was handed down.

The fact is, as the record herein establishes, when voting changes occasioned by annexations were held to be covered by the Voting Rights Act, Appellant began and most diligently pursued its quest for approval and its attempt to eliminate any dilution caused by the annexation.



## IV.

## THE ONLY EVIDENCE OF "BAD" PURPOSE CONSIDERED BELOW WAS THE IDENTICAL EVIDENCE INTRODUCED AND RELIED ON IN HOLT I, WHICH WAS REJECTED BY THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT.

Appellee Crusade states that the Court below relied on additional evidence, other than that presented in *Holt I* and stipulated into the record below. No such evidence was recited by Appellee, because there was no other evidence regarding bad purpose presented below.

## V.

## VOTING AGE POPULATION IS THE DETERMINATIVE FACTOR.

Appellee Holt's contention that the black population below voting age will soon translate into a voting-age majority (Holt, Motion to Dismiss or Affirm, at 6), ignores reality.

As pointed out by the Attorney General in the hearing before the Court below (March 20, 1974, Tr. 18-21), the black voting age population, as a percentage of the whole, is historically below the total black population, as a percentage of the whole. It is not a one-shot, one-time matter, nor is it confined to Richmond. It is, however, a reality. And, as the

Attorney General pointed out, the voting age population sets the limit on voter participation. Voting age population is, therefore, an indispensible element.

## VI.

## ECONOMIC BENEFITS OF ANNEXATION ARE IRRELEVANT TO QUESTIONS ARISING OUT OF THE VOTING RIGHTS ACT, AND EVEN IF RELEVANT, THE MANIFEST BENEFITS OF ANNEXATION ARE ABLY DEMONSTRATED IN TWO PRIOR CASES AND BY AN INDEPENDENT STUDY.

Appellees Crusade and Holt protest the "lack" of evidence on the economic benefits of annexation. It is the position of Appellant and the United States that such evidence is irrelevant to the issue of whether constitutional rights have been violated, and, if so, the proper remedy.

Notwithstanding this fact, the record is replete with evidence of the benefits of annexation, in the record of *Holt I* and the annexation trial, which are a part of the record herein.

In addition, the independent study by the Urban Institute unequivocally determined that the annexation was very beneficial, financially and otherwise, and in fact that report states, at one point:

> A method is developed for testing whether a city will gain surplus revenue from the annexation of part of an adjacent jurisdiction. This method is applied to the case of Richmond, Virginia, which



in 1970 annexed 23 square miles of neighboring Chesterfield County. As a result of this annexation, the population of Richmond grew by 19 percent and there was a 23 percent increase in Richmond's real property tax base.

Based on fiscal 1971 budgetary data, estimates are made of the annual revenue accruing to Richmond from the annexed area and annual expenditures incurred in providing public services to annexed area residents.

Results of the analysis indicate that annexed area residents contribute $337 per capita in local revenue to Richmond, and incur $239 per capita in expenditures. Thus, Richmond realizes an annual surplus of $4.6 million from the annexation. It is suggested by the authors that this surplus will continue in the future; however, it is noted that the continuation of an annexation surplus is largely dependent upon the level of school enrollment from the annexed area, since education is the major local government expenditure.

In view of the substantial issues here involved, affecting not only the future of the City of Richmond but the future application of the Voting Rights Act to

any City similarly situated, the need for plenary review is evident.

Respectfully submitted,

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*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA*

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## MEMORANDUM FOR THE FEDERAL APPELLEES

---

ROBERT H. BORK,
*Solicitor General,*

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*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA*

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## MEMORANDUM FOR THE FEDERAL APPELLEES

---

### OPINION BELOW

The opinion of the three-judge district court (J.S. App. B) is reported at 376 F. Supp. 1344.

### JURISDICTION

The judgment of the district court (J.S. App. A) was entered on June 6, 1974. Notice of appeal (J.S. App. E) was filed in that court on July 15, 1974. The jurisdiction of this Court is invoked under 42 U.S.C. 1973c.

### QUESTION PRESENTED

Whether the changes in voting practices resulting from a city's annexation of a predominantly white suburb and subsequent adoption of a plan for single-member district councilmanic elections abridge the right to vote on account of race or color, when the purpose of the annexation had been to maintain a white voting majority

in the city's at-large councilmanic elections but the effect of the subsequent adoption of the single-member district plan will be to afford black voters fair representation on the city council.

## STATUTE INVOLVED

Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, is set forth at J.S. App. D.

## STATEMENT

In 1969 the City of Richmond, Virginia annexed approximately 23 square miles of land, containing 45,705 white residents and 1,557 black residents. As the evidence recited by the district court and the special master established (see J.S. App. B, pp. 10b-13b; J.S. App. C, pp. 2c-7c), the purpose of the annexation was to maintain a white voting majority in the City's at-large councilmanic elections. An at-large councilmanic election was then held in May 1970, resulting in the election of eight white and one black city councilmen.

In early 1971, Curtis Holt, Sr., a black resident of the City, filed suit in the United States District Court for the Eastern District of Virginia, alleging that the annexation had the purpose and effect of impairing black voting rights, in violation of the Fifteenth Amendment. The district court upheld the plaintiff's contention and ordered a new councilmanic election, in which seven councilmen were to be elected at large from an area approximately within the City's old boundaries and two from approximately the newly annexed area. *Holt* v. *City of Richmond*, 334 F. Supp. 228 (E.D. Va.). The court of appeals stayed the election order and then reversed *en banc* (Butzner and Winter, JJ., dissenting) on the ground that the annexation was not entered into for the purpose of diluting black voting rights. 459 F. 2d 1093 (C.A. 4). This Court denied certiorari. 408 U.S. 931.



In the meantime, Holt had filed another suit in the same district court, seeking a judgment that the annexation was without legal effect because the City had failed to obtain prior approval as required by Section 5 of the Voting Rights Act of 1965 and requesting that the City's 1972 councilmanic election be enjoined. The injunction was denied by the district court but granted by this Court. 406 U.S. 903.[1]

Contemporaneously with that litigation, the City submitted its annexation plan to the Attorney General, who objected to the plan. The City then filed this action in the United States District Court for the District of Columbia, requesting a declaratory judgment that its annexation did not have the purpose or effect of abridging the right to vote on account of race or color. Holt and the Crusade for Voters of Richmond, an organization supporting the interests of black residents, intervened as parties defendant. After the decision in *City of Petersburg* v. *United States*, 354 F. Supp. 1021 (D. D.C.), affirmed, 410 U.S. 962, the City formulated four alternative plans for establishing single-member district councilmanic elections and submitted those plans to the parties for their review. The federal parties concluded that one of the plans, with further amendments suggested to the City by the Department of Justice, would, if adopted, sufficiently ameliorate the dilutive effects of the annexation to satisfy the requirements of Section 5. The City then adopted that plan, with the suggested amendments, in May 1973. The City thereupon amended its complaint to request a declaratory judgment approving the changes in voting

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[1]The district court subsequently enjoined further elections pending the outcome of the instant litigation. *Holt* v. *City of Richmond*, C.A. 695-71-R (E.D. Va.), Orders of October 12, 1972, and October 8, 1974.

practices resulting from the annexation as modified by the plan for single-member district councilmanic elections. The federal parties supported this request, which the intervenors opposed.

The three-judge district court denied the City's application for a declaratory judgment on the ground that the City had failed to prove "that it no longer had * * * a discriminatory purpose in retaining the annexed area after adoption of [the] single-member district ward plan" (J.S. App. B, p. 19b). The court reasoned that, to carry its burden, the City would have to demonstrate "by substantial evidence (1) that the ward plan not only reduced, but also effectively eliminated, the dilution of black voting power caused by the annexation, and (2) that the city has some objectively verifiable, legitimate purpose for annexation" (J.S. App. B, p. 20b; footnote omitted). The court determined that the City had failed to make either requisite showing. The particular ward plan adopted would not, in the court's view, effectively eliminate the dilutive effect of annexation, because whites were virtually assured a five-to-four majority on the City Council under that plan, whereas blacks would have had a significant chance of electing a majority of Council members in an at-large election within the pre-annexation boundaries. The court further sustained the special master's determination that there was no legitimate purpose for the annexation, on the ground that the evidence showed that the costs of administering the annexed area would exceed the revenues derivable from it.



## DISCUSSION

1. In the court below, both the City and the federal parties proceeded on the theory that the adoption of a single-member district voting plan that ensured black voters fair representation on the City Council would remove the discriminatory taint of an otherwise impermissible annexation. See *City of Petersburg* v. *United States, supra.* The district court, however, held that where the principal purpose of the annexation had been discriminatory, the subsequent adoption of a new voting scheme that ensures black voters fair representation within the post-annexation boundaries is not of itself sufficient to purge that discriminatory purpose.

On reflection, we agree with the district court that once it has been found that the principal purpose of an annexation was to maintain a white majority on a city council, that purpose is not purged by the mere showing that blacks will have a fair minority representation on the post-annexation city council. Cf. *Gomillion* v. *Lightfoot*, 364 U.S. 339. In other words, we agree that the City's adoption of a single-member district voting plan does not, standing alone, prove that the City "no longer [has] * * * a discriminatory purpose in retaining the annexed area * * * " (J.S. App. B, p. 19b).

2. We disagree, however, with one of the tests applied by the court below in determining whether an impermissible discriminatory purpose still exists. The court required the City to establish that "the ward plan not only reduced, but also effectively eliminated, the dilution of black voting power caused by the annexation" (J.S. App. B, p. 20b; footnote omitted). As we read the district court's opinion, that test requires the City to adopt a ward plan that would result, or be likely to result, in a black majority on the City Council. Since blacks

constitute a minority of approximately 42 percent within the City's post-annexation boundaries (see J.S. App. B, p. 14b), such a ward plan would entail substantial racial gerrymandering of a kind which would itself be of questionable vailidity under Section 5 of the Voting Rights Act. The single-member district plan adopted by the City meets the *City of Petersburg* standard by ensuring fair black representation on the City Council—four of the nine councilmen would represent substantially black wards, and a fifth would represent a "swing" ward whose population would be roughly 59 percent white and 41 percent black (J. S. App. B, p. 23b)—and we do not believe that black voters are entitled to the substantially disproportionate majority representation that the opinion below apparently requires. Because of the importance of this question to the process of municipal annexations, we believe it warrants plenary review.

3. On the other hand, we now accept the validity of the second test applied below, *i.e.*, that the City must show that it presently "has some objectively verifiable, legitimate purpose for annexation" (J.S. App. B, p. 20b). Little evidence was introduced with respect to this question in the district court; the parties, including the federal parties, concentrated on the validity of the ward plan under *City of Petersburg* and not on the nondiscriminatory purposes that might now justify retention of the annexed area.

The federal parties, however, are aware of considerations not reflected in the record that tend to show that the annexation presently serves legitimate, nondiscriminatory purposes. For example, the annexation enables the City, which has a separate school system from those in the adjoining counties, to maintain racially integrated schools having a substantial number of white students. See



*Bradley* v. *School Board of City of Richmond, Virginia*, 462 F. 2d 1058 (C.A. 4), affirmed by an equally divided court *sub nom. Richmond School Board* v. *Board of Education*, 412 U.S. 92. Evidence of this nature could have been offered at trial had it then been deemed pertinent. Such evidence might well have overcome the fiscal data on which the district court relied in finding the absence of any present legitimate purpose for retaining the annexed area within the City's boundaries. Accordingly, if this Court upon review agrees with us that the district court applied an improper standard to the City's ward plan, we believe it would be appropriate to vacate the judgment below and remand the case for the taking of additional evidence on the question whether the City now has a legitimate purpose in retaining the annexed area.

## CONCLUSION

For the foregoing reasons, probable jurisdiction should be noted.

Respectfully submitted.

ROBERT H. BORK,
*Solicitor General.*

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*Assistant to the Solicitor General.*

NOVEMBER 1974.

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CURTIS HOLT, SR., et al., and
CRUSADE FOR VOTERS OF RICHMOND, et al.,

Appellees

RESPONSE OF HOLT, ET AL APPELLEES
TO MEMORANDUM FOR THE
FEDERAL APPELLEES

OPINION BELOW

The opinion of the Three-judge District Court is reported at 376 F. Supp. 1344. References to that opinion herein are to be found in the appendix to the Appellant's Jurisdictional Statement and are designated as (J.S. App. B, p._).

Jurisdiction

The judgment of the District Court (J.S. App. A) was entered on June 6, 1974 and an appeal therefrom was noted by ap-

pellant on July 15, 1974 invoking the jurisdiction of this Court under 42 U.S.C. 1973c.

Factual Correction to Federal Appellees Statement

The federal appellees erroneously state that:

> The [Fourth Circuit] Court of appeals . . . reversed en banc (Butzner and Winter, J.J. dissenting) on the ground that the annexation was not entered into for the purpose of diluting black voting rights. 459 F2d 1093 (C.A.4).

There was no reversal of the findings of fact of the District Court in Holt I by the Court of Appeals for the Fourth Circuit. Instead, the Fourth Circuit swept aside any consideration of racial motivation with the following holding:

> Facially constitutional legislation may not be stricken because of suspect legislative motivation.

As Judge Winter noted in his lucid dissent in that case:

> The opinion of the majority may be read in vain for any adequate discussion of these findings [of invidious racial motivation] and any demonstration that they are clearly erroneous... The majority simply takes the position that the evidence to support them is extraneous to the issue.

The Fourth Circuit, however, did clearly recognize that its decision had no bearing whatever on the outcome of any suit that might thereafter be brought under §5 of the Voting Rights Act and expressly so stated after having queried the parties on this question, including the City of Richmond, all of whom unreservedly agreed that the Voting Rights Act was a separate and distinct remedy not involved in Holt I. 459 F2d at 1100.



Discussion

I

THE FEDERAL APPELLEES HAVE NO RIGHT TO A REMAND OF THE INSTANT CASE SIMPLY BECAUSE THEIR FORMER TRIAL STRATEGY MET WITH FAILURE

The federal appellees have heretofore endorsed the compromised annexation cum ward plan of the appellant despite the overwhelming and voluminous evidence that the appellant adopted both the compromised annexation and its engrafted ward plan out of a desire to perpetuate its white-dominated political control of its own black citizens. Now, however, appellees' arguments appear to reflect a change of position. The federal appellees no longer deny the appellant's invidious motivation relative to both the annexation and its engrafted ward plan, but ask this Court to overlook that motivation on the ground that these appellees have belatedly discovered a possible benefit to school integration flowing from the illegal and racist annexation. This might well be called the "silver lining" theory of civil rights enforcement.

While the federal appellees, who were parties below, assert that "[e]vidence of this nature could have been offered at trial had it then been deemed pertinent", they offer no excuse whatever for having failed to offer such evidence and they cannot point to anything in the record of the Court below which can be construed as having excluded such evidence. The government has no right to a remand of a case simply because its trial strategy when viewed in retrospect appears to have been defective.

It is at once both insulting and incredible for the federal appellees to imply that they overlooked the possibility of introducing such evidence below when they now can claim that the mere suggestion that there may be such evidence is sufficient to warrant a vacation of the judgment below and a remand of this case. Is it is possible that the federal appellees then recalled, and have since forgotten, that the right to vote is "...a fundamental political right, because preservative of all rights"? Yick Wo v. Hopkins 118 U.S. 356, 370 (1886).

II

AN INVIDIOUSLY MOTIVATED, PATENTLY ILLEGAL CHANGE IN VOTING PROCEDURE CANNOT BE TOLERATED MERELY BECAUSE IT MAY INADVERTENTLY AMOUNT TO A TOKEN FORM OF SCHOOL CONSOLIDATION NOT OTHERWISE CONSTITUTIONALLY MANDATED

The federal appellees suggest that a deliberately contrived and patently illegal assault upon the voting rights of the remaining appellees should be denied its statutory remedy because the federal appellees,who neither live, vote nor educate their children in Richmond,deem the possible enhancement of school intergration of greater importance. The black citizens of Richmond, however, have chosen, wisely, not to entrust their welfare to the caprice of the federal appellees and prefer instead to rely upon the exercise of the franchise in the manner and to the extent guaranteed them by the Voting Rights Act.

In Bradley v. School Board, 462 F2d 1058, 1069 (C.A. 4 1972), the Fourth Circuit held that state-imposed segregation had been "completely removed" in the appellant's public schools and that consolidation of its school system with those of two surrounding,



overwhelmingly white counties was not constitutionally mandated in order to achieve a better racial balance in appellant's schools. This Court affirmed the judgment of the Fourth Circuit. sub nom. School Board v. State Board of Education, 412 U. S. 92 (1973).

It would be absurd to decide on the one hand that school consolidation cannot be affirmatively mandated in order to achieve school integration while deciding on the other that an invidiously motivated and economically unsound annexation adopted and implemented in patent violation of §5 of the Voting Rights Act can be preserved because of the mere possibility that it may, to some unspecified degree, promote school integration. This ranks as the most insulting expression of the federal appellees' benign neglect. Inasmuch as the overwhelming and continually increasing majority of Richmond's public school students are black, there is every reason to believe that the interests of these children would be better served by giving back to their parents their effective voice in local government, including the school system, than by merely adding to the schools' rolls a statistically inconsequential number of white students. Those who have heretofore opposed school consolidation should not advocate it in a piecemeal fashion at the expense of the voting rights of Richmond's black citizens.

III

THE FEDERAL APPELLEES WOULD TRANSFER THE BURDEN IMPOSED BY §5 OF THE VOTING RIGHTS ACT FROM THE APPELLANT TO THE COURT BELOW

Implicit in the federal appellees'argument is the belief that on some ground or another the Court below should have ap-

proved the compromised annexation cum ward plan regardless of how miserably appellant failed to meet the burden imposed upon it by the Voting Rights Act. All the better, argue federal appellees in effect, if the Court below can fasten on some seemingly racially benign and liberal polestar such as school integration. Ultimately, the federal appellees only chide the Court below for not finding some non-racist reason for sustaining a thoroughly racist and illegal voting change. The very argument of the federal appellees implicitly recognizes that the appellant was unable to meet, and failed utterly to meet, the burden of proof imposed upon it by §5 of the Voting Rights Act. Nevertheless, these appellees urge this Court to further prolong this snail-paced litigation while the Court below struggles to do for the appellant what appellant was unable to do for itself.

IV

IN THE CIRCUMSTANCES OF THE INSTANT CASE IT WAS ENTIRELY APPROPRIATE FOR THE COURT BELOW TO INSIST THAT ANY WARD PLAN ADOPTED BY APPELLANT EFFECTIVELY ELIMINATE DILUTION OF BLACK VOTING POWER CAUSED BY THE COMPROMISED ANNEXATION

The federal appellees take issue with the remark of the Court below that the appellant would have to show that the proposed ward plan "...not only reduced, but also effectively eliminated, the dilution of black voting power caused by the annexation." (J.S. App. B, p. 206). But the federal appellees fail to address themselves to this remark in its full context. For example, in a footnote accompanying its remark the Court below recognized that in a benign, non-racially motivated an-



nexation a less stringent test of the extent to which black vote dilution must be cured is appropriate:

> The Petersburg court was fully aware that the standard "calculated to neutralize to the extent possible" which it established for annexations not motivated by a discriminatory purpose requires a city to minimize but not necessarily to remove entirely any dilution of black voting power caused by the annexation. Id [City of Petersburg, Va. v. United States, D.D.C., 354 F. Supp.] at 1031. (J.S. App. B, p.20b, footnote 46).

Further, the literal terms of the Voting Rights Act require proof by the state or political subdivision that its change in voting practice or procedure "...does not have the purpose and will not have the effect of denying or abridging the right on account of race or color...." A relaxation of this statutory standard was permitted in Petersburg, supra, only because that particular annexation was adopted without a scintilla of any impermissible racial motivation, was desired by a majority of that city's black and white citizens and was of demonstrable economic and administrative benefit to the city as a whole.

By contrast, there is here a well documented finding that the instant, compromised annexation was adopted and hastily implemented as a deliberate and purposeful scheme to dilute the black vote, was subject to deep and widespread opposition from Richmond's black citizens and was devoid of any significant counterbalancing economic and administrative benefits. In these contrasting circumstances, it would have been wholly inappropriate and at odds with equity's most basic principles for the Court below to countenance any significant degree of dilution of the black vote. The Court below stressed the genuine distinction between the two cases in stating:

> We think that when such a city [,i.e., Petersburg,] demonstrates that its boundary expansion is not motivated by a desire to dilute black voting power, a ward plan calculated to minimize any dilution that could occur should, as stated in Petersburg, save the annexation from illegality under Section 5. However, when such a city [,i.e., Richmond,] violates the Voting Rights Act by proceeding without approval of the Attorney General or this Court, with annexation of a large number of white citizens for the purpose of diluting the vote of its black citizens, an extra burden rests on that City to purge itself of discrimminatory taint as well as to show that the annexation will not have prohibited effect.

It is as though the Court were saying that one whom after a fair hearing has been found guilty no longer enjoys the presumption of innocence. This is an entirely reasonable proposition. Only vis a vis the very dissimilar Petersburg case was the appellant here placed under an "extra burden".

V

INASMUCH AS APPELLANT FAILED TO MEET EVEN THE RELAXED PETERSBURG STANDARD OF CORRECTING BLACK VOTING POWER DILUTION, THE INCLINATION OF THE COURT BELOW TO IMPOSE A MORE STRINGENT STANDARD ON APPELLANT CONSTITUTES, AT THE MOST, HARMLESS ERROR

In any event, the question of whether appellant should have been required to effectively eliminate entirely the deliberately contrived dilution of the black vote is absolutely mooted by the record below. That record establishes that the appellant's ward plan was drawn without reference to the racial living patterns in the City of Richmond by an individual whose only direction from appellant was to "keep the wards within a four to five per cent variance from population equality." (J.S. App. 28b). It was, then, not surprising that the appellees Crusade for Voters of Richmond, et al were able to conceive and present a ward plan



that went much further than did appellant's plan in preserving black voting strength. (J.S. App. 29b-30b).

The contrasting effectiveness of these plans, let alone the appellant's admission that it ignored its own racial living patterns in drafting its ward plan, warranted the Court below in finding "...that the white political leadership presently in control of Richmond adopted the ward system for the purpose of doing what they could to maintain the dilution of the Black vote produced by annexation." (J.S. App. 26b-27b). Since appellant failed, and failed deliberately, to measure up to the relaxed Petersburg standard of adopting a plan "calculated to neutralize to the extent possible" its contrived black vote dilution, it is hardly situated to complain because the Court below may have been inclined to adopt a more strigent standard. The application of a more stringent standard to appellant, conceding arguendo that it would have been wrong, would have been error of the most harmless sort. In stating "...we do not believe black voters are entitled to the substantially disproportionate majority representation that the opinion below apparently requires," the federal appellees exceed the bounds of mere advocacy. What the Court below did say was simply that, "there is good reason to think that blacks would have a greater opportunity to elect five [controlling] councilmen responsive to their concerns and interests in an at-large system within Richmond's old boundaries than in a ward system operating within the expanded boundaries [emphasis supplied]." Further, the black citizens of Richmond are not before this Court cravenly begging

to be given a disproportionate representation in the franchise. Rather these citizens are seeking as they have for the past four (4) years, to be accorded the protection of the Voting Rights Act for the preservation of their franchise. No case could better illustrate than the instant one the wisdom of Congress in passing that Act or speak more eloquently to the need for the Act's prompt and unequivocal implementation by the judiciary.

Conclusion

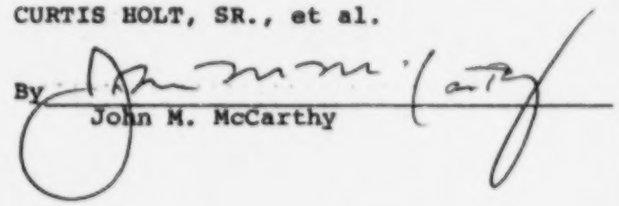
In sum, the federal appellees have failed to do anything more than inadvertently reveal a disappointment with their own trial strategy below. Neither the federal appellees nor the appellants have been able to point to any error in the record of the Court below or to present this Court with a question of substance, much less a substantial question. The Petersburg decision, which this Court affirmed, is an adequate guideline for any municipal annexation pursued in good faith and in accordance with the procedural requirements of the Voting Rights Act. Dignifying appellant's shabby record of mala fides in its pursuit of the compromised annexation by a grant of plenary review would only encourage other covered municipalities in the very sort of chicanery that §5 of the Voting Rights Act was designed to prevent. It would also serve to callously and needlessly delay still longer the free and untrammelled exercise of the franchise by all of Richmond's citizens.



For the reasons heretofore stated this appeal should be dismissed or, in the alternative, the judgment of the Court below should be affirmed.

Respectfully submitted

CURTIS HOLT, SR., et al.

By 
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

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No. 74-201

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CITY OF RICHMOND, VIRGINIA

Appellant,

v.

UNITED STATES OF AMERICA and

WILLIAM B. SAXBE, ATTORNEY GENERAL, and

CURTIS HOLT, SR., et al, and

CRUSADE FOR VOTERS OF RICHMOND, et al,

Appellees

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CERTIFICATE OF SERVICE

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*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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IN THE

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CITY OF RICHMOND, VIRGINIA,

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CRUSADE FOR VOTERS OF RICHMOND, *et. al.*,

*Appellees.*

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

## BRIEF FOR THE APPELLANT

---

### OPINION BELOW

The opinion of the special three-judge District Court for the District of Columbia is reported at 376 F. Supp. 1344 (D.D.C. 1974). Copies of the judgment and the

opinion of the District Court and the Findings of Fact and the Conclusions of Law of the Special Master appointed by that court are found in Appendices A, B and C of the Jurisdictional Statement.

## JURISDICTION

The judgment of the District Court was entered on June 6, 1974. Notice of appeal was filed in that Court on July 15, 1974. The Jurisdictional Statement was filed on August 29, 1974, and probable jurisdiction was noted on December 16, 1974. The jurisdiction of this Court to review this decision by direct appeal is conferred by 42 U.S.C. §1973c (1970).

## STATUTE INVOLVED

Section 5 of the Voting Rights Act, as amended by Act of June 22, 1970, 84 Stat. 315, 42 U.S.C. §1973c (1970), is set forth in Appendix D to the Jurisdictional Statement. This case also involves the application of the Fifteenth Amendment.

## QUESTIONS PRESENTED

1. Whether the District Court below misapplied and misconstrued the principles enunciated in *City of Petersburg v. United States*, 354 F. Supp. 1021 (D.D.C. 1972), *aff'd*, 410 U.S. 962, and then engrafted new



requirements, not intended by Congress, onto the Voting Rights Act of 1965, by refusing to approve Appellant's request for declaratory judgment and holding that, if impermissible *purpose* is involved in an annexation, an "extra burden" rests on Appellant beyond that required to cure any prohibited *effect*.

2. Whether the District Court below erred in finding that the Voting Rights Act encompasses requirements so unique as to enable that Court to find an impermissible purpose in the annexation, in direct conflict with the decision of the Court of Appeals in *Holt v. City of Richmond*, 334 F. Supp. 228 (E.D. Va. 1971), *rev'd*, 459 F.2d 1093 (4th Cir. 1972), *cert. denied*, 408 U.S. 931 (*Holt I*), which, on the identical evidence and record, found no such purpose in a suit brought under the Fifteenth Amendment.

3. Whether the District Court below exceeded the jurisdiction granted by the Voting Rights Act in (1) asserting jurisdiction "to enforce the direct command of Section 5 by enjoining the annexation in order that councilmanic elections within Richmond's old boundaries can be immediately held", and then (2) suggesting that the District Court in Virginia, in the Intervenor's separate suit, might determine a remedy.

4. Whether the District Court below properly required the economic and administrative benefits of annexation to be established in order to render a declaratory judgment that the voting changes resulting from annexation, as amended, did not have the purpose and effect of abridging the right to vote on account of race or color.

5. Whether approval of Appellant's 9-Ward Plan by the Attorney General, and his determination that the proposed change does not have a racially discriminatory purpose or effect, may be set aside or given no weight by the District Court below.

6. Whether a determination by the Court of Appeals that no violation of the Fifteenth Amendment had resulted from the annexation was *res judicata* as to the issues in a suit under Section 5 of the Voting Rights Act involving substantially the same parties.

7. Whether the decision in *Allen v. State Board of Elections*, 393 U.S. 544, requires the disapproval of an annexation which creates an incidental dilution of the black vote but which results from a legitimate and necessary governmental action, not addressed to voting or voting standards, practices or procedures.

## STATEMENT

## I.

## INTRODUCTION

The appellant, City of Richmond, Virginia, (hereinafter referred to as "the City") is a political subdivision of the Commonwealth of Virginia with respect to which provisions of Section 5 of the Voting Rights Act of 1965 as amended, 42 U.S.C. 1973c are in effect.

Accordingly, voting changes resulting from a 1969 annexation by the City were submitted to the United



States Attorney General for approval on numerous occasions. Upon failing to reach accord with the Attorney General, this case was filed in the Court below. After the suit was filed, the City and Attorney General agreed upon a ward plan for electing city councilmen and asked the Court below to enter a declaratory judgment under Section 5 of the Voting Rights Act. The Court below refused to give any deference to the Attorney General, prevailing case law or the Voting Rights Act in denying the declaratory judgment and this appeal followed.

## II

## GENERAL BACKGROUND

The City of Richmond, like all cities in Virginia, is independent and not a part of the counties surrounding it. Its boundaries may be changed only by judicial decree, after an adversary proceeding against the county from which the land area is sought or by consolidation of the city and county after the majority of those voting in a referendum in each political subdivision has separately agreed thereto. Under these unique circumstances of independence from surrounding local jurisdictions, Richmond has successfully annexed territory from surrounding counties ten times in its history, the last time prior to 1969 being 1942.[1]

As the City of Richmond developed in the 20th Century, and after the 1942 annexation, the need for

---

[1] See Tabulation for Plate 3, ACX A-2, ATR 153. The annexations as shown on said plate 3 are as follows:

| DATE | POPULATION AFTER ANNEXATION | AREA ANNEXED (SQ. MILES) | TOTAL AREA AFTER ANNEXATION (SQ. MILES) |
|---|---|---|---|
| 1742[1] | 250 | 0.20 | 0.20 |
| 1769 | 574 | 0.54 | 0.74 |
| 1780 | 684 | 0.34 | 1.08 |
| 1793 | 4,384 | 0.41 | 1.49 |
| 1810 | 9,785 | 0.91 | 2.40 |
| 1867 | 38,710 | 2.50 | 4.90 |
| 1892 | 83,000 | 0.38 | 5.28 |
| 1906 | 105,000 | 4.45 | 9.73 |
| 1910 | 127,628 | 1.02 | 10.75 |
| 1914 | 145,244 | 12.21 | 22.96 |
| 1942 | 208,039 | 16.93 | 39.89 |

Note:

[1]Original City. Source: A Master Plan, Richmond, Virginia, 1946.





revision in City government became apparent which resulted in a new charter for the City granted in 1948 (Acts of Assembly for 1948, Chapter 116). Under this new charter the city council consisted of one body which replaced the previous bicameral city council. The City under this charter elected its councilmen at large following the predominant view that local government perfoms better when governed by representatives elected at large with a concern for the welfare of the whole City. In addition, the City of Richmond was administered under the council-manager form of government.

During the 1950's various studies showed that for Richmond to remain a vital, prosperous City, expansion of boundaries was a necessity.[2] Discussions were held with epresentatives of the governing bodies of Henrico Couny which bounds the City generally on the East, North and West, and Chesterfield County which adjoins the Cty generally to the South. The City and Henrico Couny entered into negotiations seeking the consolidation of the two political subdivisions under the provisions of Title 15.1, Chapter 24, of the Code of Virginia 1950, as amended, culminating in an agreement for onsolidation between the two governing bodies. Therefter, said agreement was submitted on December 12, 961, to referendum in both political subdivisions in accordance with law. The voters of the City

[2]References to the record herein are abbreviated as follows: "MTR" for the transcript of the hearing before the Master; "HTR" for the transcript from *Holt I*; "ATR" for the transcript from the annexation case. References to exhibits from the respective records will be preceded by "M", "H", or "A". The City's exhibits in each record are designated "CX". The Joint Appendix is abbreviated JA; the Appendix to the Jurisdictional Statement is abbreviated JS. Other references are described fully.

approved the consolidation plan, but the voters in Henrico County disapproved the plan which therefore failed. *Holt v. City of Richmond*, 459 F.2d 1093, 1094 (4th Cir. 1972), *cert. denied*, 408 U.S. 931.

## III.

## THE ANNEXATION CASE

Promptly thereafter, on December 26, 1961, the city council of the City, in accordance with the provisions of the Virginia annexation statutes (Section 15.1-1032 *et seq*. Ch. 25, Code of Va. of 1950, as amended) adopted two annexation ordinances requesting the convening of a three-judge annexation court and seeking from said court the annexation of approximately 150 square miles of Henrico County and approximately 51 square miles of Chesterfield County, respectively. After numerous delays in pretrial procedures, including proceedings in the Supreme Court of Appeals of Virginia, the annexation suit against Henrico County resulted in a decree awarding the City approximately 16 square miles of land area which contained 42,690 white persons and 660 non-white persons with financial obligations imposed upon the City of approximately $55 million. City council, in March, 1965, concluded by ordinance that it was not in the best interests of the City to accept the annexation award because the heavy financial burden imposed by the court upon the City was out of proportion to the amount of territory awarded and, with the consent of



the Court, the Henrico case was dismissed. (*Holt v. City of Richmond, supra*, at 1095).

Thereafter, the annexation suit against Chesterfield County, which had been allowed to remain dormant on the docket of the Circuit Court of Chesterfield County pending the proceedings in the Henrico County suit, was brought on for hearing. After various delays, the case came on for a full hearing in May and June of 1969. The decree of the annexation court dated July 12, 1969, awarded approximately 23 square miles of land area adjacent to the City located in Chesterfield County. The population as of 1968 of Chesterfield County prior to annexation was 102,633 white and 9,845 non-white persons. The pre-annexation population of the City as of 1970 was 202,359 of which 103,377 were black and 98,982 were non-black persons. The annexation added to the City, according to the 1970 United States Census figures, 47,072 people, of which 1,389 were black and 45,683 were non-black persons. The post-annexation population of the City was, therefore, 249,431, of which 104,766 were black and 144,665 were non-black. (MCX 1, 2, 3, MTR 210, 233.)

The Annexation Court specifically found that "the evidence overwhelmingly convinces us of the necessity for and expediency of some annexation . . . . " (J.A. 42) The Annexation Court adopted a compromise agreement backed by the City and Chesterfield County. The compromise was entered into by the County "to promote a better spirit of cooperation and friendliness between the City and County." (J.A. 46). The City

entered into the compromise essentially because the Henrico annexation award by the court had been so financially unacceptable that the City was fearful of another such unpalatable award (HTR 362, Vol. II, and 455, Vol. III, of four volumes).

Appeals were instituted by numerous intervenors from Chesterfield County which were denied by the Supreme Court of Appeals of Virginia. Thereafter, a motion for stay of the effective date of annexation fixed by the Virginia statutes, to-wit, January 1, 1970, and a petition for certiorari were filed by said intervenors in the Supreme Court of the United States. The motion for stay was denied separately by Justices Douglas, Marshall and Brennan, prior to January 1, 1970, the effective date of annexation. On April 20, 1970, the petition for certiorari was denied by this Court. *City of Richmond v. County of Chesterfield*, 208 Va. 278, 156 S.E.2d 586, *cert. denied sub. nom. Deerbourne Civic & Recreation Ass'n v. Richmond*, 397 U.S. 1038.

On January 1, 1970, the City, pursuant to the annexation decree, took jurisdiction over the area awarded to it from Chesterfield County by said Annexation Court in accordance with the provision of the annexation statutes, and has continued to operate, manage and supervise the area since that date (MTR 50).



## IV.

## HOLT DECISIONS

### A. Holt I

On February 24, 1971, a class action was instituted in the United States District Court for the Eastern District of Virginia in the name of Curtis Holt, Sr. It alleged primarily that the voting rights of the plaintiff class guaranteed by the Fifteenth Amendment had been violated by the change resulting from the annexation. The District Court, on November 23, 1971, ruled that the annexation before it had the purpose of abridging the right to vote on account of race or color in violation of the Fifteenth Amendment. Though the Court found that annexation in some form was "inevitable", it also found that the compromise agreement resulting in this annexation was improper. The Court, therefore, ordered a new election of city councilmen. Seven were elected at large by the former City residents, and two elected primarily from the newly annexed area. This election order was stayed on December 8, 1971, by the United States Court of Appeals for the Fourth Circuit. On appeal, by both the City and Holt, the Court of Appeals ruled that "Under the circumstances, no violation of any Fifteenth Amendment right was worked by the annexation, effected, as it was, by the decree of the state court," thus reversing the lower Court's decision. A Writ of Certiorari was denied by this Court. *Holt v. City of Richmond*, 334 F. Supp. 228 (E.D. Va. 1971), *rev'd*, 459 F.2d 1093, 1100 (4th Cir. 1972), *cert. denied*, 408 U.S. 931. (Hereinafter referred to as *Holt I*).

**B. Holt II**

On December 9, 1971, Curtis Holt, Sr., instituted another suit in the United States District Court for the Eastern District of Virginia (*Holt II*) (Case No. C.A. 695-71-R). He alleged, *inter alia*, that the City had not complied with Section 5 of the Voting Rights Act of 1965, and that, accordingly, the annexation of territory from Chesterfield County was invalid. A three-judge court was convened pursuant to 28 U.S.C. Section 2284 (1970). The plaintiff in that action subsequently sought an injunction against the election officials of the City of Richmond, to restrain them from holding the election of city council members, scheduled under Virginia law for the first Tuesday in May, 1972. The three-judge court refused to enjoin the election. Upon application to the Chief Justice of the United States, the election was stayed on April 24, 1972, until further order. 406 U.S. 903. The trial of that case was continued on motion of both the City and the plaintiff as discussed *infra*, at note 5. A subsequent Order was entered by the three-judge court on October 12, 1972, which enjoined any elections of City officials. The case was continued pending the lower Court's decision herein and the case was again continued pending final determination of the instant case by this Court.



## V.

## PROCEEDINGS PURSUANT TO VOTING RIGHTS ACT

Immediately after the decision on January 14, 1971, by the Supreme Court of the United States in *Perkins v. Matthews*, 400 U.S. 379, the City Attorney, on behalf of the City, sought approval initially on January 28, 1971, from the Attorney General, of the annexation retaining the at-large voting procedure.[3] At that time no guidelines had been established by the Department of Justice to seek such approval.[4] By letter of February 16, 1971, Jerris Leonard, Assistant Attorney General, replied in part:

> We are considering the materials you submitted with your January 28th letter and will determine promptly whether any additional materials are necessary for the Attorney General to make his determination and be in further contact with you.

The City submitted additional material on March 5, 1971, as requested by subsequent letter from the Attorney General. Thereafter on May 7, 1971, the Attorney General declined to approve the voting change resulting from the annexation, in light of the at-large voting procedure (MTR 50, 53, Ex. B to Complaint, J.A. 23), and referred the City to the lower court's decision in *Chavis v. Whitcomb*, 305 F. Supp. 1364

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[3]The letter of January 28, 1971, in part stated:

"Would you please advise me whether or not the above proceedings come within the Voting Rights Act of 1965, and if so, what steps should be followed in order to secure your approval." Ex. A to Complaint, J. A. 20.

[4]Such regulations were published on September 10, 1971, in 36 Fed. Reg. No. 176.

(S.D. Ind. 1969), subsequently reversed in 403 U.S. 124.

Thereafter, the Attorney General was asked by letter from the City Attorney dated August 2, 1971, to reconsider his objection in light of the reversal of *Chavis*. The Attorney General by letter of September 30, 1971, declined to lift his objection, again suggesting, as he had done previously, that the adoption of "single-member, *non-racially* drawn councilmanic districts" was one means of minimizing the racial effect (Ex. D to Complaint J.A. 31). [Emphasis added]

Again, upon final decision of the *Holt I* case by the Fourth Circuit Court of Appeals and denial of a Writ of Certiorari by this Court, 408 U.S. 931, the City Attorney asked the Attorney General by letter of July 5, 1972 to reconsider his objection. The basis for this request for reconsideration was, as the parties in the *Holt I* and *Holt II* cases had agreed,[5] that the Voting

[5] In *Holt II* the City requested and obtained with the concurrence of counsel for the plaintiff Holt a continuance of that case until the Fourth Circuit Court of Appeals had decided *Holt I*. In the hearing to obtain that continuance, counsel for Holt had agreed that the Voting Rights Act was only a codification and procedural implementation of the Fifteenth Amendment. Counsel for Holt stated in part as to why he brought a Fifteenth Amendment case prior to the Voting Rights action:

> "And we were dealing with very, very extensive issues and very basic constitutional freedoms and felt that the Fifteenth Amendment way to go, while there were two avenues of attack, each independent from the other, as I believe this court has ruled, and I believe the Fourth Circuit has ruled, while we still had two alternative methods of attack that the Fifteenth would bring us to the basic gut issue a lot faster. That is what we did where we went."



Rights Act codified Fifteenth Amendment rights; therefore the *Holt I* decision in favor of the City should have erased all objections under the Voting Rights Act.

Having received no reply from the Attorney General, on August 25, 1972, the City filed this lawsuit, pursuant to the Act, seeking approval of the annexation with at-large voting. The complaint for declaratory judgment was founded on the fact that the annexation and at-large procedure had been judicially approved as not being a violation of the Fifteenth Amendment in the *Holt I* case (MTR 57).

After the City had filed this suit, the Attorney General declined to reconsider his position because this case was pending.

While this suit was thus pending, this Court affirmed *Petersburg v. United States*, 354 F. Supp. 1021 (D.D.C. 1973), *aff'd* 410 U.S. 962. The lower Court in that case held that a similar annexation by the City of Petersburg, in the context of at-large elections, abridged the right to vote of the black population. That Court held that the annexation could be approved on the condition that "modifications calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters are adopted, *i.e.*, that the plaintiff shift from an at-large to a ward system of electing its city councilmen." 354 F. Supp. at 1031.

Also, the City Attorney did not contact the Attorney General again until *Holt I* was ended since he believed that case would answer the Attorney General's objections. *See*, note1, Legal Memorandum of Plaintiff, filed July 2, 1973, in the Court below.

At a preliminary hearing on March 8, 1973, the Court below asked counsel for Plaintiff whether *Petersburg* was similar to this case as the Court believed it was. Counsel replied in the affirmative. As in *Petersburg*, the *effect* of the annexation is dilution of black voting strength. (Tr. March 8, 1973 hearing, at p. 3.) After that, assuming *Petersburg* controlled, the City Attorney advised the city council of the effect of the Petersburg decision, and advised that the City should submit to the court a 9-Ward plan to meet the requirement set out in *Petersburg* (MTR 58, 98).

After a public hearing, a 9-Ward plan was developed and discussions were held from time to time with counsel in the Department of Justice. Changes were suggested by the Department of Justice and approved by the City in order to make the plan acceptable under Section 5 of the Voting Rights Act. The resulting final Plan, MCX15, J.A. 161, is the plan presented by the City and the Attorney General to the Court below (MTR 58-60, 114, 216, 300-01).

Thereafter, a proposed consent judgment was presented to the Court by the City and the Attorney General. Since the Voting Rights Act gives the Attorney General authority to approve covered voting changes administratively and since the Attorney General is given deference in such matters (*Petersburg v. United States, supra*, at 1031), the City expected the consent judgment to be entered. Nevertheless, after a hearing on the motion for consent judgment in which the Attorney General and City asked that their ward plan be approved, the case was referred to a Special Master.



## VI.

## DECISION OF COURT BELOW

After a hearing the Special Master recommended de-annexation to the District Court based upon his finding that this annexation was the result of an impermissible purpose. To reach a basis for this recommendation, the Master made findings of fact based primarily on evidence stipulated into the record from the *Holt I* case which had been declared by the Fourth Circuit Court of Appeals not to prove bad purpose.

The District Court, though not ordering de-annexation, adopted the findings of the Master and ruled that an "extra burden" must be overcome to purge the bad purpose for this annexation and thus ignored the decision in *Holt I* and *Petersburg*. The District Court below further held that no economic or financial administrative benefits for the City could be ascribed to the annexation even though the necessity and expediency of annexation had been established in the state annexation court and in *Holt I*, both of which records are part of the record in this case. Moreover, the City does not believe economic or administrative conditions to be an issue under the Voting Rights Act.

The Court denied the petition for declaratory judgment and took no affirmative action, whereupon this appeal was filed.

## SUMMARY OF ARGUMENT

A. Following *City of Petersburg v. United States*, 354 F. Supp. 1021 (D.D.C. 1972), *aff'd*, 410 U.S. 962, while the City's case was pending in the District Court, the City, in consultation with the Department of Justice, approved a 9-Ward Plan, "calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters."

Prior to annexation, blacks accounted for 44.8% of the voting age population. The ratio of voting age population to the nine council seats was 4.03 seats. Annexation reduced the black voting age population to 37.3% of the total. The City's 9-Ward Plan guarantees the black citizens 4 seats on the City Council, corresponding exactly to the ratio of black voting age population to council seats prior to annexation. Voting age population is the outside limit on the number of citizens who can register and vote, and thus is the necessary measure of voting strength. The City's plan, as approved by the Attorney General, therefore effectively eliminates any dilution caused by annexation.

B. The District Court found that the annexation was accomplished for an impermissible purpose, and that, therefore "an extra burden rests on that city to purge itself of discriminatory taint. . . ." (J.S. App. B., p. 20) That Court held that, to so "purge" itself, the City would have to show (1) that the ward plan not only reduced, but effectively eliminated dilution of black voting power, and (2) that the City had some objectively verifiable, legitimate purpose for annexation.



1. The 9-Ward Plan not only eliminates any dilution of black voting strength, it actually enhances that strength over and above what it was prior to annexation. Then, with the at-large election system then in effect, and assuming bloc voting by race, black citizens could not have elected any black candidates to the council. The 9-Ward Plan was adopted to assure black citizens of at least 4 seats. Any dilution is thus eliminated. Any "extra burden" beyond this necessitates more than elimination of dilution to the maximum extent reasonably possible, the *Petersburg* standard, and, indeed, more than effective elimination of dilution. The Court below has, in effect, rewritten the Act. Nowhere in the Act, the legislative history, or the interpretive decisions is such a requirement of an "extra burden" ever implied.

Further, nowhere in the Act or legislative history is it suggested that two distinct violations as to "purpose" and "effect" could occur. These terms are only means to the same end. If a change in voting practices has an impermissible effect, it is also prohibited. No different burden or sanction is required to "cure" the purpose of an impermissible change. The remedy is the same - a fairly drawn plan meeting constitutional requirements. *City of Petersburg v. United States*, 354 F. Supp. at 1030-31.

2. The Court below adopted the Master's finding that the City "failed to establish any counterbalancing economic or administrative benefits of the annexation." (J.S. App. B., p.20). The Court below, by this finding, has totally ignored the record. The record of the

annexation case was a part of the *Holt I* record, all stipulated into evidence herein.

Even though the record is replete with such evidence from the *Holt I* record, such findings are irrelevant to the issue before the Court. The issue herein is whether voting changes caused by the annexation, modified by the 9-Ward Plan, resulted in an impermissible dilution of black voting strength. This is a question of constitutional rights, upon which economic issues have no bearing. *Watson v. Memphis*, 373 U.S. 526, 537-38.

The annexation record is completely concerned with economic and administrative benefits of the annexation, as required by Virginia law. The Virginia Court found the necessity and expediency for the annexation; without proof it could not have done so. The annexation has been approved by the Virginia Court, and, in *Holt I*, by the Fourth Circuit, on the same record as was before the Court below. The District Court's finding simply ignores this portion of the record.

C. The record in *Holt I* was adopted by the Master, and is relied on by the Court below. That record is the only evidence regarding "purpose" in this case. The Court below, upon this evidence, found the annexation to be "tainted" with an illegal purpose.

1. The Court in *Holt I* did not find any illegal purpose in the annexation itself. It found this annexation to be "inevitable" and "necessary". 334 F. Supp. at 234, 236. The finding of the *Holt* Court was concerned with the compromise agreement and the timing of that agreement as to affect the 1970 election.



2. The Court of Appeals for the Fourth Circuit reversed the District Court to the extent that the purpose of the compromise was found to be impermissible. That judgment should be given *res judicata* and collateral estoppel effect herein. The question of purpose should not have been redetermined by the three-judge District Court.

D. Any annexation of surrounding territory would, in fact, dilute the black vote in the City, as recognized in *Holt I*, 334 F. Supp. at 234. An increase of voters resulting from a legitimate annexation cannot be considered "substantive discrimination". *Allen v. State Board of Elections*, 393 U.S. 544, 559.

*Perkins v. Matthews*, 400 U.S. 379, 389, held that Section 5 was designed to cover changes having a "potential for racial discrimination in voting". This is a holding only as to *coverage*, and does not answer the substantive question of whether the change was for the purpose or had the effect of abridging the right to vote. If it did, virtually every change in city land areas by annexation would be inhibited. The substantive question is the same under Section 5 as under the Fifteenth Amendment - whether the purpose and effect of the change is to abridge or deny the right to vote on the basis of race or color. Here, the effect upon black voting strength was incidental to achieving different, legitimate governmental goals attainable only through annexation. While the change may be covered by Section 5, *Allen* and *Perkins* should not be applied to prohibit such annexation.

## ARGUMENT

### I.

### THE QUESTION OF PURPOSE HEREIN HAS BEEN SETTLED.

#### A. The District Court Found An Impermissible Annexation Purpose On The Same Record Upon Which The Fourth Circuit Court Of Appeals Previously Had Reached An Opposite Conclusion.

The incidental and unintended effect of the City of Richmond's annexation of Chesterfield County, the dilution of black voting strength, is conceded here. *City of Petersburg v. United States*, 354 F. Supp. 1021 (D.D.C. 1972), *aff'd*, 410 U.S. 962, disposed of the notion that impermissible effects of an annexation could not be cured, thereby locking the City into its original boundaries, by holding that such was not the intent of Congress in enacting the Voting Rights Act. 354 F. Supp. at 1030.

The District Court below, however, found an impermissible purpose in the annexation. This holding is in direct conflict with the decision of the Court of Appeals in *Holt v. City of Richmond*, 459 F.2d 1093 (4th Cir. 1972), *cert. denied*, 408 U.S. 931, *rev'g* 334 F. Supp. 228 (E.D. Va. 1971). (*Holt I*).

The Court below made substantially the same findings, based on the same evidence, as were made by the District Court in *Holt I*. The findings of the *Holt I*



District Court on impermissible purpose were reversed by the Court of Appeals, which held, on the same evidence before the Court below in the instant case, that no impermissible purpose existed.

In deciding the issue of motivation, or purpose, Chief Judge Haynsworth, writing for the Court of Appeals said:

> "What is attacked is the Council's failure to reject the annexation award and the informal participation of some councilmen in an agreement which hastened the conclusion of the tediously prolonged litigation."
> 459 F.2d at 1099.

That Court further stated:

> "There is no finding, and the record would not support such a finding, that any councilman who did, or did not do, anything in 1969 was not motivated by the same purposes which led to the institution of the annexation proceeding in 1961 and recurrent attempts to reach a settlement agreement in the intervening years. If some impermissible reason crept into the minds of some members of Richmond's Council in 1969, that cannot negate all of the compelling reasons which led them and their predecessors in office to press on the same course in earlier years." *Id.* at 1099.

The District Court in *Holt I* had concluded that "the Councilmanic Election of 1970 is tainted and new elections are called for." 334 F. Supp. at 239. This conclusion was reversed. To the extent that the *Holt I* District Court found motivation or purpose for the compromise agreement to be impermissible, that was overruled by the Court of Appeals.

The Court of Appeals stated: "Under the circumstances, no violation of any Fifteenth Amendment right was worked by the annexation, effected, as it was, by the decree of the state court." 459 F.2d at 1100.

The identical record and evidence, from *Holt I*, were before the Court below in the instant case. In the instant case the only hearing on the merits, before the Special Master, related to the 9-Ward Plan and the elimination of dilution of black voting strength. All evidence regarding purpose of the annexation was stipulated into the record from the *Holt I* record.

The determination of the *Holt I* Court was held by the Court below, however, not to be binding, despite the identical subject matter and the parties. The only evidentiary hearing on the merits of this question was before the *Holt I* District Court. On this record alone, the Court below found that impermissible purpose did exist (J.S. App. B., p. 16, fn. 43), whereas the Fourth Circuit reached the opposite conclusion in the Fifteenth Amendment case.

In refusing to follow the determination of the Court of Appeals in *Holt I*, the Court below in effect held that Section 5 requires a different standard and different interpretation of the same evidence than does the Fifteenth Amendment.

While *Holt I* was brought under the Fifteenth Amendment, the instant case was instituted pursuant to the Voting Rights Act. This Act was passed to provide a concise, speedy, procedural remedy for violations of rights guaranteed by the Fifteenth Amendment. The purpose of the Act has been stated many times:



> "The Act was drafted to make the Fifteenth Amendment finally a reality for all citizens." *Allen v. Board of Elections*, 393 U.S. 544, 556. *See also, South Carolina v. Katzenbach*, 383 U.S. 301 and *Perkins v. Matthews*, 400 U.S. 379.

The Court below thus cannot reach a conclusion as to the significance of the same evidence in a Section 5 case different from that in a Fifteenth Amendment case. They are one and the same, and must be the same for Section 5 to have an underlying Constitutional foundation. *South Carolina v. Katzenbach, supra* at 326-327.

### B. The Findings Of The Holt I District Court Do Not Reach Invalidation Of the Purpose Of The Annexation.

The Court of Appeals for the Fourth Circuit, in reversing the District Court, in *Holt v. Richmond, supra*, summarized the District Court's holding thusly:

> "...the District Court did not invalidate the decree of the annexation court. Instead it sought to provide some compensation for the timing of the decree by ordering districting of voters...." 459 F.2d at 1097.

The District Court in *Holt I* thus actually found, in part, that:

> "Annexation itself was inevitable as evidenced by the State Court's decree. The fact that the proposed compromise terms were those adopted by the Circuit Court of Chesterfield County does

not strike this Court as being unusual." 334 F. Supp. at 236.

And, again, the District Court found:

"The Court is satisfied from the evidence that the initial proceedings against each county were not motivated by any effort to dilute, deny or disenfranchise the vote of Negro citizens." *Id.* at 231.

Further, the District Court found that annexation was necessary and that the City would ultimately prevail in the annexation proceeding, quoting the State Court to that effect:

" 'The evidence overwhelmingly convinces us of the necessity for and the expediency of some annexation.' " *Id.* at 234, note 3.

And, the District Court further said:

"The Court is cognizant that any compromise agreement in the then pending suit and/or judicial decree resulting in annexation would have diluted the Negro vote." *Id.* at 234.

And, thus the District Court found:

"The wrong to the plaintiff class was as to the Councilmanic Election of 1970. Ultimately there would have been a dilution of the class' voting strength. Annexation of any portion of Chesterfield County would have accomplished this – but only because of the race of the members of the class was it accomplished prematurely." *Id.* at 237.

In characterizing the lawsuit, the District Court speaking of the Plaintiff class, said:



"True they seek in addition a declaration that the annexation award is null and void and without effect. The Court's findings however, *go primarily to that portion of the annexation proceedings which embodied in the compromise agreement a compact to dilute for the Councilmanic Election of 1970 the vote of the plaintiffs* solely because of their race." *Id.* at 238. (emphasis added).

Thus, the finding of the *Holt I* District Court was concerned with the compromise agreement, and the timing of that agreement as to affect the 1970 election. (That holding was, of course, reversed by the Court of Appeals.) The District Court did not find the annexation to be "tainted" by any wrongful purpose, but only that the 1970 election, was so "tainted". 334 F. Supp. at 239. The two factors, the agreement and the timing thereof, are inseparable as the basis of that Court's conclusions.

These findings do not, however, constitute findings of unlawful purpose of the annexation, *per se*. The annexation was found, in fact, to be necessary and properly motivated.

The impermissible purpose found by the *Holt I* District Court, therefore, concerned only the compromise agreement, which shortened the annexation proceedings, and effected the 1970 elections. This can only mean that if the proceedings had run their course, annexation would have been ordered (it was "inevitable", 334 F. Supp. at 236), and no impermissible purpose as to any element would have been found. The election of 1970 is over and cannot now be undone. The clock cannot be turned back to order a re-election at that time. The next election, however, and future

elections, are at issue here. It is these elections, by the expanded electorate, with which we are concerned. The 9-Ward Plan is the determining factor here.

### C. The Decision As To Purpose In *Holt I* Is Binding Herein Under The Principles of *Res Judicata* And Collateral Estoppel.

Chief Justice Warren stated regarding *res judicata* and collateral estoppel:

> ". . . under the doctrine of *res judicata*, a judgment 'on the merits in a prior suit involving' the same parties or their privies bars a second suit based on the same cause of action. Under the doctrine of collateral estoppel, on the other hand such judgment precludes relitigation of issues actually litigated and determined in the prior suit, regardless of whether it was based on the same cause of action as the second suit." *Lawler v. National Screen Service Corp.* 349 U.S. 322. *See also* Justice Harlan's Opinion in *Hoag v. New Jersey*, 356 U.S. 464.

Volume 1B J. Moore, *Federal Practice* ¶0.441[2] (2d ed. 1965) states the following regarding *res judicata* and collateral estoppel:

> "Courts and writers have used the term 'res judicata' to refer generally to the doctrine of judicial finality, including collateral estoppel." *Id.* at 3775.
>
> "As we have seen, application of the doctrine of res judicata necessitates an identity of causes of action, while the invocation of collateral estoppel does not. Each doctrine on the other hand requires that, as a general rule both parties to the subsequent litigation must be bound by the prior judgment. The essence of collateral estoppel by judgment is that some question or fact in dispute has been judicially and finally determined by a court of competent jurisdiction . . . ." *Id.* at 3777.



According to traditional *res judicata* notions, a member of a class is considered to be a party by representation, and will be bound to the same extent as an actual party. But, in order to be deemed a party by representation, a class member must be represented in such a way that his rights are protected. 7A Wright & Miller, *Federal Practice and Procedure*, Civil § 1789.

> "It is familiar doctrine of the federal courts that members of a class not present as parties to the litigation may be bound by the judgment where they are in fact adequately represented by parties who are present, or where they actually participate in the conduct of the litigation in which members of the class are present as parties . . . or where the interest of the members of the class, some of whom are present as parties, is joint, or where for any other reason the relationship between the parties present and those who are absent is such as legally to entitle the former to stand in judgment for the latter." *Hansberry v. Lee*, 311 U.S. 32, 42-43.

*Holt I* was a class action by black voters residing within the City, as found by the District Court. Crusade for Voters and Holt, Intervenors herein, represent the same class. In *Holt I*, the Court found that the class was adequately represented (see Order filed November

23, 1971, by the *Holt I* District Court). In the *Holt* case, officers of the Crusade testified on behalf of Plaintiff class, and therefore obviously had notice of, and participated in, the lawsuit. The findings, and the decision of the Court of Appeals, are binding under the principles of collateral estoppel on these parties who are the only objectors to the proposed 9-Ward Plan. The United States, and the Attorney General, do not oppose Plaintiff's position, as evidenced by their position herein.

When a judgment has been subjected to appellate review, the appellate court's disposition of the judgment provides the key to its continued form as *res judicata* and collateral estoppel. A judgment that has been reversed on appeal is deprived of all conclusive effect, as *res judicata* and collateral estoppel. The appellate court's judgment is then entitled to *res judicata* and collateral estoppel effect, when it becomes final, as is the case with *Holt I.* 1B J. Moore, Federal Practice ¶0.416 [2] (2d ed. 1965); Restatement, *Judgments* § § 68, 69.

The doctrine of collateral estoppel is applicable to questions of law, as well as to questions of fact. However, "it is not applied to questions of law unless the successive actions not only involve the same questions of law, but also arise out of the same transaction or involve the same subject matter". Scott, *Collateral Estoppel by Judgment,* 56 Harv.L.Rev. 1, 10 (1942). The usual statement of the rule is that where an issue of fact, or in limited situations, an issue of law "essential to the judgment is actually litigated and



determined by a valid and final judgment, the determination is conclusive between the parties and their privies." Note, *Developments in the Law - Res Judicata,* 65 Harv.L.Rev. 820, 840 (1952), citing Restatement, *Judgments,* § 68(2).

In the instant case, the issue now being discussed, whether the purpose of the annexation was for the purpose of denying or abridging blacks the right to vote on account of race or color, was the very issue decided in *Holt I.* The subject matter is the very same subject matter as was involved in *Holt I.* Therefore, the question of law, or of mixed law and fact if that should be the case, has been decided by the Court of Appeals, whose judgment is final. There was no such purpose.

The Court of Appeals held:

> "For perfectly valid reasons, Richmond's elected representatives had sought annexation since 1961. Those reasons were compelling, so much so that, as the District Court found, annexation was 'inevitable.' For those reasons, and for those reasons alone, settlement negotiations had been undertaken, and the court had encouraged and prompted them. If they were not fruitful earlier, there is no suggestion anywhere that the legitimate reasons for compromise did not wax in strength as the litigation extended into its eighth year. There is no finding, and the record would not support such a finding, that any councilman who did, or did not do, anything in 1969 was not motivated by the same purposes which led to the institution of the annexation proceeding in 1961 and recurrent attempts to reach a settlement agreement in the intervening years." 459 F.2d at 1099.

This conclusion is binding upon the Defendant-Intervenor parties herein, and should not be now retried in this action. The annexation has been determined as fairly intended to accomplish a legitimate governmental purpose, with nothing therein to indicate a racial purpose. Insofar as the question of "purpose" is involved, both the facts and legal issues have been determined. This conclusion brings us full circle to the situation of *Petersburg, i.e.*, determination of the effect of the annexation, as modified by the 9-Ward Plan.

The effect is conceded, the expansion of the at-large voting system, diluting black voting power. The 9-Ward Plan eliminates that dilution completely. The requirement of the Court below of an "extra burden" because of impermissible purpose is invalid, as discussed *infra.*



## II.

## THE VOTING RIGHTS ACT ONLY CODIFIES AND ESTABLISHES A PROCEDURAL REMEDY FOR IMPLEMENTATION OF THE FIFTEENTH AMENDMENT AND THEREFORE INCIDENTAL VOTING CHANGES, WHICH DO NOT ABRIDGE OR DENY THE RIGHT TO VOTE, RESULTING FROM A LEGITIMATE ANNEXATION DO NOT VIOLATE THE ACT.

Section 5 is simply a means of implementing the commands of the Fifteenth Amendment to the Constitution as the title of the act states, "An act to enforce the Fifteenth Amendment to the Constitution of the United States, and for other purposes." (Public Law 89-110; 79 Stat. 437). In *South Carolina v. Katzenbach*, 383 U.S. 301, 327, this Court stated: "Congress exercised its authority under the Fifteenth Amendment in an inventive manner when it enacted the Voting Rights Act of 1965."[6] The Amendment and the Act both speak of "abridging or denying" the right to vote. These words connote some affirmative act directed at voting discrimination or infringement, not just incidental or collateral voting changes resulting from a legitimate legislative act.

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[6]In *Allen v. Board of Elections*, 393 U.S. 544, 556, the Court stated:

> "The Act was drafted to make the guarantees of the Fifteenth Amendment finally a reality for all citizens. *South Carolina v. Katzenbach, supra,* at 308, 309."

It has continuously been the position of the City that *Holt I* should be given *res judicata* and collateral estoppel effect in this case since *Holt I* found "no violation of any Fifteenth Amendment rights was worked by the annexation." This Court considered this question without deciding it in *Allen v. Board of Elections*, 393 U.S. 544, at 556 note 20.[7]

The Court below was considering the same voting changes resulting from the same annexation on the same facts which had been found to be completely free of any Fifteenth Amendment violation.

Whether the substantive question arises under Section 5 or the Fifteenth Amendment, it is the same—whether the purpose and effect of the change is to deny or abridge voting rights on the basis of race or color. In the instant case, the change in black voting strength was not an abridgement or denial but incidential to achieving different, legitimate governmental goals attainable only through annexation. Such an expansion should not be unlawful, whether it brings in more whites or more blacks.

*Perkins v. Matthews*, 400 U.S. 379, 389, held that Section 5 was designed to cover changes having a "potential for racial discrimination in voting." This is a plain holding that such changes are covered. It does not answer the substantive question of whether the change was for the purpose of abridging the right to vote. If it

[7]"20. Appellees argue that §5 only conferred a new "remedy" on the Attorney General of the United States. They argue that it gave citizens no new "rights," rather it merely gave the Attorney General a more effective means of enforcing the guarantees of the Fifteenth Amendment. It is unnecessary to reach the question of whether the Act creates new "rights" or merely gives plaintiffs seeking to enforce existing rights new "remedies." However the Act is viewed, the inquiry remains whether the right or remedy has been conferred upon the private litigant."



did so imply, virtually every change in city land areas by annexation would be discouraged, if not effectively inhibited. It is difficult to conceive of any system, standard, practice or procedure which could not be thus challenged as discriminatory.

An annexation by the City of any surrounding territory would, in fact, dilute the black vote in the City. This was recognized by the court in the initial proceeding in *Holt I*, 334 F.Supp. at 234. An increase of voters resulting from a legitimate annexation cannot be considered "substantive discrimination." *Allen v. State Board of Elections*, 393 U.S. 544, 559. Unless the racial composition of the annexed area approximates that of the City, annexation inevitably will reduce the voting potential of one of the races.

What, then, are the factors which should be considered by the Attorney General and the Court in determining whether invalid discrimination has resulted?

The Act itself provides some general guidelines. It suggests that both "the purpose" and "the effect" of the annexation must be considered. But these are relevant only with respect to situations where the right to vote on account of race is "denied or abridged". These terms - "denying" and "abridging" connote discriminatory action. Merely changing the number of people entitled to vote does not constitute a denial or abridgement unless this is both the purpose and the effect. There must be a finding of racial discrimination. The test should be whether the predominant purpose is racial and discriminatory. This may be determined from the history of annexation in the particular city and state, from a study of the need for and purposes of the annexation, and from all other relevant facts.

The governing principle is that, where such dilution is an inevitable, incidential and collateral consequence of legislative or judicial action not addressed to voting, and is supported by substantial, legitimate governmental considerations, the dilution is not an effect of a changed voting procedure. It is, rather, a product of other, legitimate governmental action.

The purpose of the Act is not to prevent orderly growth of cities. Here, Richmond would have acquired an overwhelming majority of white voters in whatever direction it might annex (as with the Henrico County attempt at annexation).

While the "change" here involved may be "covered" by Section 5, if *Allen* and *Perkins* are construed so as to prohibit this annexation, then every change must be so prohibited. *Allen* and *Perkins* should not be so applied. Thus since this voting change resulted from a legitimate governmental action, annexation, diluting but not abridging or denying the vote of black citizens, the change was covered by the Act, but should not be prohibited.

## III.

## THE DISTRICT COURT HAS MISCONSTRUED AND REWRITTEN SECTION 5 OF THE VOTING RIGHTS ACT BY PLACING AN "EXTRA BURDEN" UPON THE CITY BECAUSE OF ALLEGED IMPERMISSIBLE PURPOSE IN THE ANNEXATION.

The District Court, adopting the Master's findings, found that the annexation by Richmond of part of



Chesterfield County was accomplished for an impermissible purpose—the dilution of black voting strength in the City. The Court further held that, therefore "an extra burden rests on that city to purge itself of discriminatory taint as well as to show that the annexation will not have the prohibited effect." (J.S. App. B., p. 20).

Further, the District Court held that:

> "To convince a court that such a city, by adoption of a ward plan, has purged itself of a discriminatory purpose in an annexation of new voters, it would have to be demonstrated by substantial evidence (1) that the ward plan not only reduced, but also effectively eliminated, the dilution of black voting power caused by the annexation, and (2) that the city has some objectively verifiable, legitimate purpose for annexation." (J.S. App. B., p. 20).

The Court then held that the City had failed to present substantial evidence that "its original discriminatory purpose did not survive adoption of the ward plan" and, adopting the Master's conclusion, that the City " 'failed to establish any counterbalancing economic or administrative benefits of the annexation.' " (J.S. App. B., p. 20).

The requirement of such an "extra burden" constitutes an unwarranted rewriting and extension of the Voting Rights Act. Even so, the record herein establishes conclusively that the conditions set forth by the Court have been met by the City, and the Court's conclusions are thus without support in the record.

### A. There Is No Requirement Of Any "Extra Burden" Because Of An Impermissible Purpose Contemplated By The Voting Rights Act, And No Suggestion That "Purpose And Effect" May Constitute Two Different Violations Requiring Different Burdens.

Nowhere in the Act, or in the cases interpreting that Act, does such a requirement as was imposed by the Court below, *i.e.*, an "extra burden" because of impermissible purpose, appear. In reading this requirement into the Act, the District Court, in spite of its protestations to the contrary, has, in effect, adopted the Master's contention that an impermissible purpose can never be cured, as suggested in Section IV-C, *infra*.

Further, nowhere in the Act, or the legislative history, is it even suggested that two distinct violations as to "purpose" or "effect" could occur, or that these terms are anything other than means to the same end. If a voting change has an impermissible purpose its implementation is prohibited. If a change has an impermissible effect its implementation is prohibited. If it has both impermissible purpose and effect, it is likewise prohibited. There is nothing in the Act to indicate that a different burden or standard is required for showing absence of either purpose or effect.

The legislative history, in fact, indicates that the intent of the Act is to the contrary. Prior to enactment of the Voting Rights Act of 1965, plaintiffs in cases brought under the Fifteenth Amendment were sometimes required to prove both racial purpose and racial effect to prove a violation. The requirement of proof of



such purpose was obviously difficult and often impossible. The Act not only placed the burden of proof on the jurisdiction seeking a voting change, but was designed to make clear that a showing of impermissible effect was enough for a violation of Section 5. Actually, the Act makes clear that a failure of proof on either item by the jurisdiction is sufficient. (*See*, Hearings Before the Subcommittee on Constitutional Rights of the Senate Committee on the Judiciary, 91st Cong., 1 st Sess., 507, 536 (1969)).

As with apportionment cases in which districts are badly malapportioned, the malapportionment may be due to normal population shifts, or to deliberate gerrymandering. The remedy is the same – a fairly drawn redistricting which meets constitutional requirements. *City of Petersburg v. United States, supra*, 354 F. Supp. at 1030-1031.

### B. Any "Extra Burden" Required To Eliminate Dilution Of Black Voting Strength Would Necessitate Invalid Racial Gerrymandering In Itself.

As is demonstrated below, the City's 9-Ward Plan effectively eliminates any dilution of the black vote by guaranteeing black citizens 4 seats on the 9 member Council, corresponding to the ratio of black voting age population prior to annexation. Thus, in fact, an "extra burden" necessitates more than elimination of dilution to the maximum extent reasonably possible –

the standard of *Petersburg*, and, indeed, more than effective elimination of dilution. Thus, the test of the District Court would require the City to adopt a plan resulting in a black majority on the Council. In the present enlarged City, blacks constitute only 37.3% of the voting population and 42% of the population as a whole. The adoption of a plan resulting in a black majority would result in a reverse discrimination, a racial gerrymandering solely for that purpose, which, in itself, would be invalid under the Act. As the District Court itself said, (J.S. App. B., p. 4) the Voting Rights Act is designed to insure *equal* participation of all races in the electoral process. *See South Carolina v. Katzenbach*, 383 U.S. 301, 308; *Allen v. State Board of Elections*, 393 U.S. 544, 556.

The Attorney General, charged with enforcement of the Act, and given equal status with the courts in passing upon voting changes, has taken the position that the black voters are not entitled to the "substantially disproportionate majority representation" that the Court below requires. (Memorandum for the Federal Appellees, p. 6).

The fact is, any dilution of black voting strength is effectively eliminated by the 9-Ward Plan.



## IV.

## THE CITY'S 9–WARD PLAN EFFECTIVELY ELIMINATES ANY DILUTION OF BLACK VOTING STRENGTH OCCASIONED BY THE EXPANSION OF THE OLD AT-LARGE VOTING SYSTEM.

### A. The City's 9-Ward Plan Effectively Eliminates The Dilution in Black Voting Strength.

Assuming, arguendo, an impermissible purpose here, the ultimate and absolute effect of the City's voting changes, the expanded electorate modified by the 9-Ward Plan, is the elimination of any dilution of black voting strength caused by the expansion. The 9-Ward Plan (MCX 15, 18, J.A. 161, 162), guarantees 4 seats out of 9 to a black voting age population of 37.3%, and total black population of 42%.

Prior to the annexation, the Council was elected on an at-large basis. At that time, the black voters accounted for 44.8% of the voting age population. If bloc voting by race is assumed, the black population in that instance could not be assured of even one seat on the Council. The ratio of voting age population to the 9 Council seats was 4.03 seats. Annexation, expanding the electorate, reduced the black voting age population to 37.3% of the total.

The City's 9-Ward Plan, adopted for the purpose of minimizing this dilution to the extent reasonably possible, assures black citizens of Richmond 4 seats on the Council. By assuring 4 seats, corresponding to the

black voting age population *prior to annexation*, the dilution of black voting strength is totally eliminated. In fact, the black voting strength is actually enhanced over and above that prior to annexation, when black voters could not have been assured of any seats, given bloc voting by race. (While bloc voting by race is not as severe in Richmond as elsewhere, it must be assumed in all calculations, for if there were none, there would be no voting change. It is impossible to calculate otherwise. The City has, therefore, "assumed the worst" in its efforts to cure dilution. The less bloc voting that occurs, of course, the better. If there is none, there is no dilution, and the Act does not come into play.)

The 9-Ward Plan divides the City, including the annexed area, into 9 single member districts, or wards. The population norm for each ward is 27,715. The maximum over representation is 4.6%; the largest under representation is 5.0%. Total deviation is, therefore, 9.6%, insofar as the requirement of one-man, one-vote applies. This is well within the tolerance recently set out by the Supreme Court in *Mahan v. Howell*, 410 U.S. 315.

The Plan eliminates any dilution of black voting strength by guaranteeing 4 of 9 councilmen from wards which are black, reflecting the current population breakdown of the City, and, more important, conforming to the voting age population prior to annexation. A fifth seat is possible from Ward H (MCX 15, J.A. 161) depending upon the speed of projected future population movement.



No race has a constitutional right to elect one of its race, *Cherry v. New Hanover*, 489 F.2d 273, 274 (4th Cir. 1973), and

> "... [T]here is no principle which requires a minority racial or ethnic group to have any particular voting strength reflected in the [city] council. The principle is that such strength must not be purposely minimized on account of their race or ethnic origin."
> *Cousins v. City Council of Chicago*, 466 F.2d 830, 843 (7th Cir. 1972), *cert. denied*, 409 U.S. 893.

Nevertheless, here 4 seats are assured, placing black voters in a stronger position than prior to annexation. Any dilution is thus eliminated.

### B. Voting Age Population Is The Proper Measure of Voting Strength.

Voting age population is the outside limit on the number of voters who can register and vote. It is the necessary measure of voting strength. *Zimmer v. McKeithen*, 467 F.2d 1381, 1384-1385 (5th Cir. 1972); *Moore v. Leflore County*, 361 F. Supp. 603, 607 (N.D. Miss. 1972).

The Court below characterized this position as superficial (J.S. App. B., p. 23). In fact, that Court's reasoning was superficial, holding that the black youngsters would grow up and simply translate into voting age population. This simply ignores the realities of black voting age population. As pointed out by the Attorney General, the census figures show that the

discrepancy between population and voting age population is not a mere happenstance. United States Census figures for 1950 and 1960 show that black voting age population (using age 18, as that is the present voting age) was 1.9% and 4.2%, respectively, lower than the black population percentage of total population. In 1970, of course, black voting age population was 7.2% lower than the black population percentage. It is an historical fact, and must be considered. *See,* HCX 24, Ex. 6 thereto, filed separately herein. See also, U.S. Censuses of Population and Houses: 1960, Census Tracts, Richmond, Virginia, Final Report PHC(1) - 126, Table 2, p. 22; U.S. Census of Population: 1950, Richmond, Virginia Census Tracts, Bulletin P-D45, Table 2, p. 11. *See also,* statement of the Attorney General before the Court below, Hearing of March 20, 1974, pp. 18, 19. If it is not, the reality of the situation will be ignored. Voting age population is the only significant element in defining the electorate. It is based upon undisputed census figures. Ignoring this factor ignores the fact that "legislators represent people, not percentages of people". *Graves v. Barnes,* 343 F. Supp. 704, 713, n. 5 (W.D. Tex. 1972), *aff'd and rev'd in part, sub. nom., White v. Regester,* 412 U.S. 755.

### C. The *Petersburg* Decision is Controlling.

In a situation similar to this case, *City of Petersburg v. United States,* 354 F. Supp. 1021 (D.D.C. 1972), *aff'd,* 410 U.S. 962, the Court stated:

> "... [T]his annexation can be approved only on the condition that modifications calculated to neutralize *to the extent possible* any adverse affect upon the political participation of black voters are adopted, i.e., that the plaintiff [city] shift from an at-large to a ward system of electing its city councilmen." 354 F. Supp. at 1031 (emphasis added).



It was this standard which led the City to draft its Ward Plan, consult with the Department of Justice, accept the Department's changes, and amend the complaint herein.

The Court below has attempted to distinguish *Petersburg* by concluding that that decision was based upon a finding that the annexation therein did not have an impermissible purpose, and therefore, a different standard must apply to Richmond. That conclusion constitutes a rewritting by the Court below of the *Petersburg* decision. *Petersburg,* in this connection, held only that, notwithstanding an absence of impermissible purpose, an impermissible effect was prohibited by the Act. 354 F. Supp. at 1027. The District Court below has taken this finding and "stood it on its head" to conclude that the decision was based upon the absence of impermissible purpose. That is clearly erroneous.

As stated in Section III, *supra,* there are not two distinct violations, or elements of proof, under the Act, each requiring a separate remedy, or placing an "extra burden" on the City. To so conclude in effect adopts the Master's conclusion that impermissible purpose can never be cured; *i.e.,* if there were impermissible purpose, it is there and cannot be erased, so that any correction, no matter how complete or equitable, is precluded. If "purpose" requires a rescission of the governmental action, here the annexation, there can

never be a correction. This conclusion of the Court below subverts the Act and its purpose, and flies squarely in the face of *Petersburg*.

### D. The Purpose Of The 9-Ward Plan Was To Minimize Dilution Of Black Voting Strength To The Greatest Extent Possible.

The District Court below held that discriminatory purpose was involved in the adoption of the 9-Ward Plan, (J.S. App. B., p. 23) and that the Plan was not designed to neutralize to the extent possible the dilution of black voting power. This holding is seemingly based not only upon the refusal to consider voting age population, but upon the finding that Dallas H. Oslin, Senior City Planner who drew up the plans, did not consider racial factors. (J.S. App. B., p. 28).

It is true that Oslin stated he did not consider racial factors, (MTR 216, 217) but there is absolutely nothing in the entire record indicating that Oslin meant anything other than that he had no invidious racial purpose.

It is simply not true that the City did not attempt to minimize the dilution caused by the expansion of the at-large system. The holding of the Court below shows a complete misreading of the record. Oslin is a technical expert who was asked to draw a ward plan for the purpose of minimizing the dilution of black voting strength.

The record clearly shows that immediately after the *Petersburg* decision the City was advised that a ward



plan should be submitted in accordance with that decision. Several plans were submitted to the United States, and the City asked the help of the United States in fashioning a ward plan which would minimize the dilution of black voting strength (Motion of the United States for Modification of Master's Report, p. 8). Suggestions were made by the Department of Justice, and adopted by the City, in an effort to minimize dilution, as directed by *Petersburg*, to meet the requirements of the Act.

In fact, the only reason the 9-Ward Plan exists is that it is a whole-hearted, good faith attempt to neutralize dilution, in accordance with *Petersburg*.

The holding of the Court below confuses the method of drawing a plan with the purpose of drawing a plan. The *method* used followed the recommendation of the Attorney General for "non-racially drawn councilmanic districts" (Ex. D to Complaint, J.A. 31). Oslin's mission, however, was to prepare a plan which minimized the dilution to the greatest extent possible. In conjunction with the United States, this was done. The only reason Oslin drew a plan at all was to minimize dilution. The only reason the City sought the help of the Department of Justice was to minimize dilution. The City did not, in the abstract, desire a ward plan. The only reason the plan was adopted was to minimize dilution. (J.A. 393, 399, MTR 90-93, 105-6, 112). The efforts of the City, with the help of the United States, were successful. The 9-Ward Plan not only "minimizes" the dilution caused by the expansion of the old at-large system, but it effectively eliminates it.

**E. The City's Plan Not Only Eliminates Dilution, But Constitutes A Correct, Fairly-Drawn Ward Plan.**

Dallas H. Oslin had, in 1971, drawn other plans for the *Holt I* case, but felt these were not adequate, and prepared an additional plan. (MTR 95, 300, J.A. 438, 443).[8] He did not use the census information on race until after the plans were initially drawn. The information used was census tracts and block statistics from the 1970 census. (MTR 215-16, 306, J.A. 434, 463).

Mechanically, Oslin, in drawing his last plan, began with the perimeter of the City, working toward the center, so that, when compromise was necessary in order to keep population near equal, the compromise took place in the center of the City. This was done to keep wards compact and prevent difficult, bad adjustments and odd shapes as far as possible. (MTR 322).

He used his background knowledge of the census data and of the people who live in each area. (J.A. 455). In addition, he studied the City, and used land use maps, air photographs, and in difficult areas, sought advice from a resident as to where to split the area. (MTR 221-22, 230).

[8]Though no racial data was used to draft the ward plan, Oslin well knew that the purpose was to minimize dilution of the black vote.



The City's 9-Ward Plan provides four black wards and four white wards, as follows:

| | | | | | |
|---|---|---|---|---|---|
| Ward C | 73.6% | black | Ward A | 98% | white |
| Ward E | 64.6% | black | Ward B | 83.9% | white |
| Ward F | 88.9% | black | Ward D | 98.8% | white |
| Ward G | 85.9% | black | Ward I | 95% | white |

Also, Ward H, now 59.1 percent white and 40.9 percent black, is the so-called swing ward. (MCX 18, J.A. 162).

Based upon the census statistics, in the old City, prior to annexation, the voting age population was 44.8 percent black and 55.2 percent non-black. (MTR 218-20, 306-16, 508-09).

The City Plan (MCX 15, 18, J.A. 161, 162) follows natural, geographical, physical and historical divisions of the City, the most notable being the James River, as the boundaries of the wards. These physical and historical boundaries will last through time, regardless of the composition of the population. (MTR 705).

Mr. Todd, the City's expert, developed the facts about the City included hereinabove in the background section. He has been employed by the City since 1947 as a planner. In his career there have been numerous times when his department has broken the City down into subunits or planning areas. To do this, he studied the needs of the people—their problems, their composition, their unique features—by subareas of the City. The planning department has traditionally used planning

districts or planning areas for which data is collected, and from which both neighborhood and district plans are made. Examples are the community renewal program and master planning urban renewal report. (MTR 328-29).

The basic criteria other than minimization of dilution used in drawing a ward plan, specifically a 9-ward plan, for the City of Richmond were:

(a) one-man, one-vote or equality of population to the greatest extent reasonably possible;

(b) a compact area within each ward, avoiding gerrymandering;

(c) to the greatest extent reasonably possible a strong community of interests within each ward; and

(d) consideration of physical boundaries. (MTR 334-35).

The black voting-age population of Richmond was 44.8 percent before the annexation and 37.3 percent after annexation. The ward plan submitted to the District Court below by the City and the United States Attorney General reflected accurately, to the greatest extent reasonably possible, the black-white ratio of voting age population, as it existed before annexation.



## V.

## THE DISTRICT COURT INTRODUCED ELEMENTS INTO THE CASE WHICH ARE NOT INCLUDED WITHIN THE PLAIN MEANING AND PURPOSE OF THE VOTING RIGHTS ACT, BY REQUIRING THE CITY TO ESTABLISH, AT TRIAL, ECONOMIC AND ADMINISTRATIVE BENEFITS FOR THE ANNEXATION.

### A. The Annexation *Per Se* Was Not Before The Court For Decision.

The District Court below held that, in meeting the extra burden placed upon it, the City must show that it has some objectively verifiable legitimate purpose for the annexation (J.S. App. B, p. 20). That Court adopted the Master's conclusions that Appellant "failed to establish any counter-balancing economic or administrative benefits of the annexation." The findings of the Master, adopted by the Court, relate to the economics of de-annexation and the comparative financial benefits of administering the annexed area.

Such findings, and the underlying evidence, are irrelevant to the issue before the District Court - whether the voting changes caused by annexation, amended by the 9-Ward Plan, resulted in an impermissible dilution of the black voting strength in the City. This case concerns the voting changes occasioned by the

annexation. This is a question of constitutional rights, upon which economic and administrative issues have no bearing. *Watson v. Memphis*, 373 U.S. 526, 537-38.

This case is not concerned with the annexation itself. It is only the effect upon the voting system of Richmond which brings the Act into play. Indeed, in *Petersburg*, intervenors contended that the annexation *per se*, even with a shift to ward voting, could not be approved under the Act. That contention was refused. *Petersburg v. United States*, 354 F. Supp. 1021, 1029 (D.D.C. 1973), *aff'd* 410 U.S. 962.

*Petersburg* thus established that the annexation, insofar as it is a boundary change and not an expansion of an at-large voting system, is not the kind of discriminatory change which Congress sought to prevent. 354 F. Supp. at 1031.

It is the expansion of Richmond's at-large voting system, therefore, and not the annexation itself, which is the proper, and only, subject for consideration under the Act. Therefore, the City, pursuant to *Petersburg*, adopted its 9-Ward Plan to cure the dilutive effect on black voting which was caused by the expansion of the at-large voting system upon annexation.

The question was not whether the annexation was a good one, or a bad one, for the City of Richmond. A "good" annexation cannot make an impermissible change valid; a "bad" annexation cannot make a permissible change, which eliminates any dilution in black voting strength, invalid.



Further, the Attorney General is given status, equal to that of the Courts, to pass upon voting changes under Section 5. Any requirement that economic and administrative benefits of annexations must be considered by him will place an insurmountable burden upon the Department of Justice. The Attorney General, acting through the Voting Rights Section of the Department of Justice, is an expert, indeed the *only* expert, in the area of voting rights. If, in order to fulfill his statutory duties under Section 5, the Attorney General must now become an expert in annexations, and the governmental, economic and administrative aspects thereof, an impossible administrative burden will be placed upon him, one that was never contemplated by the Act.

**B. Even If Relevant, The Economic And Administrative Benefits Of The Annexation Are Established Beyond Question By The Record Herein, Which Was Ignored By The District Court Below.**

The City was not required by the Act to justify the annexation *per se* in the proceeding. The proper forum for that issue was the duly constituted Virginia Annexation Court which ordered the annexation. If there were no legitimate and proper justification for the

annexation, there would have been none. The annexation was accomplished by a three-judge Annexation Court pursuant to the laws of Virginia. The record of that proceeding, a part of the *Holt I* record, establishes beyond question the legitimate economic, governmental and administrative benefits of annexation. This voluminous record[9] was stipulated into the record herein for the very purpose of obviating the need for reintroducing the same evidence. The Court below, however, while focusing upon other parts of the record, totally ignored this great mass of evidence. Its finding that the City failed to prove these benefits is incomprehensible.

This Court may take judicial notice of the necessity for expansion confronting our nation's cities today. In Virginia, this expansion can only be accomplished by a special Annexation Court, pursuant to §15.1-1032 *et seq.*, Ch. 25, Code of Va., as amended, as was done here.

The statutory guide for annexation in Virginia has been the "necessity for and expediency of annexation." The judicial interpretation of this standard is discussed in detail by Professor Bain in C. Bain, *Annexation in Virginia,* 1966. The factors involved include, *inter alia,* the City's need for additional territory, the need for governmental services in the annexed area, and financial factors. The last mentioned factor includes gain or loss of revenue and taxation considerations, including whether the City can afford annexation. Bain, *supra,* at 104-136. All these factors were the subject of the extensive

[9]The annexation case took 9,095 pages of transcript, and involved 82 witnesses and 381 exhibits.



annexation hearing. That record was before the Court below. These are the very factors, with additional ones, which the Court below seemed to think had not been treated by the City.

In fact, these economic and administrative benefits of annexation have now been established before three different Courts. (The Annexation Court and the District Court and Court of Appeals in *Holt I*). The fact that the Annexation Court adopted the proposed compromise does not in any way negate that fact. That Court still had the duty to determine if the standards for annexation had been met. That Court found, and the District Court in *Holt I* adopted the finding, that "The evidence overwhelmingly convinces us of the necessity for and the expediency of some annexation." (J.A. 42; 334 F. Supp. at 234, n. 3).

The Three Judge District Court in Washington, D.C., with jurisdiction only under Section 5, may not usurp the function of a Virginia Court to retry the annexation, and, moreover, may not require additional economic and administrative factors to justify an annexation over and above those required by State laws. These factors are in the record and have been judicially established by a properly constituted Virginia Court, whose findings were affirmed by the Virginia Supreme Court of Appeals, 210 Va. 1i (1970), with certiorari having been denied by this Court. 397 U.S. 1038.

### C. The Record Of The Hearing Below Does Not Support The Master's Findings, As Adopted By The District Court.

The District Court said in its opinion (J.S. App. B., p. 20):

"The master concluded that the 'City has failed to establish any counterbalancing economic or administrative benefits of the annexation' [footnote citing Master's Conclusion of Law, No. 17, J.S.App. C., p. 15]. The Master's conclusion was predicated upon findings of fact supported by direct testimony before him. The Master further found that the return of the annexed area to Chesterfield County would actually save the City at least $8.5 million of operating loss per year and $21.3 million of required capital outlay. [Master's Findings of Fact, No. 27, J.S.App. C., p. 11].*** Richmond did not offer any testimony before the Master to controvert these findings.*** The City cites from this [*Holt*] record an estimate that revenues from the annexed area for fiscal year 1971-72 exceeded appropriations from it by about $1.5 million.*** These evidentiary references to *Holt* were, of course, considered by the Master in making his findings. [Footnote reference to study by the Urban Institute]."

The Master obviously did not consider the evidence in the *Holt* record but relied entirely on the testimony of Melvin W. Burnett, (J.A. 527-530). This witness' testimony and his conclusion is patently specious.

Burnett referred to the annual financial report of the City Auditor which showed that the per capita cost of government in the entire city was $531.00. He estimated 50,000 people in the annexation area and arrived at $26.5 million as the "cost of governing the area." To this figure, he added for capital outlay "roughly, $3 million," and arrived at a total cost of government for the area of $29.5 million, from which



he deducted estimated revenues of $21 million. Thus, he arrived at a loss from the area of $8.5 million, which the Master adopted.

It is apparent on the face of it that allocation of per capita cost for the whole city to the increase in the population resulting from annexation is specious. The high class suburban area comprising most of the annexation area needs far fewer services than the central city. Furthermore, capital outlay is obviously not a part of the cost of government, except as already reflected in the Auditor's report in the form of debt service.

In addition to the direct evidence of the City Manager in the *Holt* case discussing the economic impact of annexation (HTR, 531-543, 546-551, and J.A. 387, 388, 390), and the obviously fallacious allocation of per capita costs, there are at least two other uncontradicted and indisputable items of evidence in the record which are irreconcilable with Burnett's conclusion and the Master's finding on this point.

First, City Exhibit #1 entitled "Census Tracts, Richmond, Virginia," Table P-4, in the hearing before the Master below, shows that the median family income for the ten census tracts that comprise the annexed area is $12,440; whereas, the median family income for the remaining portion of the City is $7,692. The exhibit shows that, in the 1970 census, reporting the year 1969, those with median family income under $20,000 amounted to 20.8% of the total in the old City, but only 5.5% in the annexed area. It needs no citation of authority to support the proposition that the higher the

level of income the less the requirement for municipal services. More affluent citizens need less welfare, less police, less recreation; on and on throughout the list of normal municipal services required by the old central City.

Secondly, Burnett by using per capita cost for the whole city allocated to the annexation area the exact percentage of expenditures that the people in the area bear to the total population of the city, approximately 18.86%; whereas, of approximately 6,500 city employees (exclusive of schools which comprise 22.5% of the city expenditures as shown by the Auditor's report) only 509 employees, or 7.83%, were used to serve the annexed area. (Uncontradicted testimony of the City Manager in *Holt I*, HTR 110-112). The greatest cost of government by far is personnel.

Hence, the evidence relied upon by the Master and by the District Court cannot pass muster when stacked against the direct testimony of the City Manager that the operations in the annexed area result in an economic benefit to the City.

This earlier testimony is further reinforced by a report published by The Urban Institute: "The Impact of Annexation on City Finances: A Case Study in Richmond, Virginia," Thomas Muller and Grace Dawson, The Urban Institute, May, 1973. The Urban Institute Study was done with the financial support of the Ford Foundation. The Study states, at p. iii, concerning the annexation:

> "As a result of this annexation, the population of Richmond grew by 19 percent and there was a 23 percent increase in Richmond's real property tax base.



> "Based on fiscal 1971 budgetary data, estimates are made of the annual revenue accruing to Richmond from the annexed area and annual expenditures incurred in providing public services to annexed area residents.
>
> "Results of the analysis indicate that annexed area residents contribute $337 per capita in local revenue to Richmond, and incur $239 per capita in expenditures. Thus, Richmond realizes an annual surplus of $4.6 million from the annexation. It is suggested by the authors that this surplus will continue in the future; however, it is noted that the continuation of an annexation surplus is largely dependent upon the level of school enrollment from the annexed area, since education is the major local government expenditure."

### D. The District Court Below Has No Jurisdiction To Consider De-Annexation.

The District Court below exceeded its jurisdiction in considering Intervenor Holt's assertion that de-annexation of the territory is the proper remedy, and in considering evidence pertaining thereto. The jurisdiction of the District Court in the District of Columbia to hear and determine requests for declaratory judgments under Section 5 is limited by that section, which confers jurisdiction on that Court. The authority of that Court extends only to the declaration of whether the voting changes occasioned by the annexation, as amended by the 9-Ward Plan, have or do not have the

purpose and effect of denying or abridging the right to vote on account of race or color. *Beer v. United States*, 374 F. Supp. 357, 361-62 (D.D.C. 1974). In the instant case the proper issue under the Act was not what Richmond's boundaries should be, or whether the County could afford to take back the territory, but was whether the at-large voting system as expanded by annexation and then modified by the 9-Ward Plan of election, had a proscribed purpose or effect.

The Court below, however, did "not assent to any language in the *Beer I* opinion" which suggested that jurisdiction was so limited (with Judge Jones dissenting). (J.S. App. B, p. 33). The Court below then, relying on *Perkins v. Matthews*, suggested that Intervenor Holt return to a local three-judge United States District Court for appropriate remedy. While this Court may obviously remand to a lower Court with instructions to formulate a remedy, the District Court for the District of Columbia cannot, on the authority of *Perkins*, pass jurisdiction under the Act, much less jurisdiction which it has assumed but does not have, to another three-judge District Court in Virginia.

### E. De-Annexation Is Not A Proper Remedy In Any Event, Since It Would Contravene The Reason And Purpose Of The Voting Rights Act.

De-annexation, pressed by Intervenor Holt, would only subvert the purpose of the Voting Rights Act. The Act



was designed and passed, as the legislative history shows, to banish racial discrimination in voting, in order to insure equal participation of minorities, especially blacks, in the electoral and governmental processes. *See South Carolina v. Katzenbach*, 383 U.S. 301, 308; *Allen v. State Board of Elections*, 393 U.S. 544, 556. De-annexation here, however, would be retrogressive, returning the City to its pre-annexation posture: at-large voting, voting age population 44.8% black, 55.2% white. Any bloc voting by race, as found by the Court below, will be further aggravated by this case and de-annexation. In such a situation, black voters cannot be expected to elect even one representative to the Council. Therefore, black participation will be less than it is now, and obviously a great deal less than that assured by the 9-Ward Plan.

This result would be nothing less than a "punishment" of present and former officials, and the white citizens of Richmond. Nothing in the Act allows such a result. Not only that, it would also be a "punishment" of black citizens of the "old" City, a fact ignored by the Court below.

In *Petersburg*, the Court, after concluding that de-annexation was improper, stated:

> "We recognize that it is arguable that black citizens might be able to obtain even greater representation in old Petersburg if the annexation were prohibited." 354 F. Supp. at 1031.

The *Petersburg* Court nevertheless found in favor of the change to a ward system. In the instant case, the facts are even stronger. Black citizens will *not* obtain

greater representation if the annexation is prohibited. Black representation is enhanced by the City's 9-Ward Plan. It is not only error but it is folly to ignore the purposes of the Act by considering de-annexation.

## VI.

## THE DISTRICT COURT BELOW IMPROPERLY AND ERRONEOUSLY IGNORED THE ATTORNEY GENERAL'S APPROVAL OF THE CITY'S 9-WARD PLAN.

After the City brought suit seeking approval of its expanded at-large voting system, the *Petersburg* decision was affirmed by this Court. The City then, in order to meet the standard set out in *Petersburg*, drafted its original 9-Ward Plan (MCX 14, J.A. 160), and sought help from the Department of Justice in drawing a ward plan which eliminated dilution of black voting strength. The Attorney General approved the resulting 9-Ward Plan, (MCX 15, J.A. 161) and has supported it throughout these proceedings as having no racial purpose or effect.

The Court below, however, gave no weight to the Attorney General's interpretation. This was error. The Attorney General's interpretation of Section 5 is "entitled to deference." *City of Petersburg v. United States*, 354 F. Supp. 1021, 1031 (D.D.C. 1972), *aff'd* 460 U.S. 962; *Perkins v. Matthews*, 400 U.S. 379, 390-391.



The Attorney General is, in fact, the only "expert" in this area recognized by the Act. The Act gives him equal responsibility for an initial decision upon voting changes. In exercising that responsibility, he will refrain from objecting to a voting change only if he is satisfied that "the proposed change does not have a racially discriminatory purpose or effect." *Georgia v. United States*, 411 U.S. 526, 537.

The Attorney General has approved the City's 9-Ward Plan at issue here. His interpretation is entitled to deference.

## VII.

## THE COURT BELOW MADE SUBSTANTIAL ERRORS OF FACT, WITHOUT SUPPORT IN THE RECORD, IN DETERMINING THAT RICHMOND HAD NOT COMPLIED WITH THE ACT. THE RECORD SHOWS THAT, IN FACT, RICHMOND HAS COMPLIED WITH THE ACT.

The Court below disregarded substantial evidence and made findings that are completely erroneous, which findings were used as the basis for portions of its opinion.

For example, the Court in its opinion states that the City assumed jurisdiction over the territory annexed on January 1, 1970, and thereafter conducted city council elections knowing that both were illegal. (J.S. App. B, p. 14.) This is a gross mischaracterization of the

evidence since no one, including the intervenors herein and even the Attorney General, understood the results of annexation to be covered by the Voting Rights Act. *Perkins v. Matthews*, 400 U.S. 379, decided one year after the annexation, was the first case to hold that the results of annexation were so covered.

The District Court in several instances states that the election was concededly illegal. The City has never conceded any such thing. At the time the election was conducted it was perfectly legal. Perhaps the District Court stated this fact as a concession since there is no evidence to support it.

Further, the Court states that the Master's finding, in which he found racial motivation in Richmond's negotiation and acceptance of the 1969 annexation settlement agreement, was unchallenged. In fact, the record shows that the City had won an annexation suit four years earlier against the County of Henrico which was refused because of the high cost, and in addition, both the *Holt I* record and the annexation case record are replete with evidence which showed the other concerns of the City and county for settling the case.

In this connection the District Court states (J.S. App. B, p. 13) that the City "expressed no interest in economic or geographic considerations such as tax revenues, vacant land, utilities or schools." The evidence of the City manager as well as several councilmen well demonstrates this not to be the case. (J.A. 386-392). This evidence from the *Holt I* record was simply ignored.

The Court indicated (J.S. App. B, p. 20) that the City failed to establish any kind of economic or



administrative benefits of annexation, thereby completely ignoring the evidence which had been stipulated into the record below from the *Holt I* record, as well as all evidence from the annexation court record. The Court also indicated that the annexed area was a financial burden on the City, again ignoring the evidence of the City manager (J.A. 388) as well as the independent study by the Urban Institute. It seemed to make no impression upon the District Court that the sole witness testifying that the annexed area was a financial burden to the City was a witness from Chesterfield County who testified for a self-serving purpose only; that is, return of the land.

The District Court said (J.S. App. B, p. 15) that it was a year after the Attorney General objected to the new voting system before the City filed this case. However, constant contact was maintained with the Attorney General to attempt to resolve the matter. In addition, as stated above, the City, as well as Intervenor Holt, thought that the Fourth Circuit Court of Appeals would end this matter in *Holt I* since the "gut issue" under the Voting Rights Act was included in the Fifteenth Amendment claim. The Attorney General also was aware of the City's position at this time, as it had filed *amicus* pleadings in that case.

Further, the District Court states (J.S. App. B, p. 15) that it was only after *Perkins* and after the Attorney General had informed Richmond that it was in violation, that the City made its "belated attempts" to comply with the Act. This is erroneous, and is a gross mischaracterization of the evidence in the record. Immediately after

*Perkins*, Appellant submitted its request to the Attorney General, who never informed Appellant of anything at all, *except in response to Appellant's requests*, which were made pursuant to its efforts to comply with Section 5. In short, Appellant was not prompted to action by the Attorney General, and there is no evidence in the record to support the statement of the District Court.

The Court below states (J.S. App. B, p. 19) that it did not agree that a showing that the City "has made some effort to remove the discriminatory effect of an annexation by adoption of a ward plan is sufficient to prove that it does not retain the annexed voters for a discriminatory purpose." This is a further misrepresentation of the record by the Court below. The evidence clearly shows that the City made many and exhaustive efforts to comply with the Act, beginning two weeks after the decision in *Perkins*, including seeking help from the Attorney General, which resulted in the joint ward plan presented to the Court.

The District Court has, it appears, selectively chosen portions of the total record that will support its conclusions. Certainly huge areas of the record, before the Master, and from *Holt I* and the annexation case, were completely ignored.



## VIII.

## CONCLUSION

For the reasons stated herein, it is repectfully submitted that the judgment of the Court below should be reversed, and that this Court remand this case to the Court below, with direction to grant the City's request for declaratory judgment to the effect that the expansion of the electorate caused by annexation, under an at-large system of elections, does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color; or, that the expansion of the electorate caused by the annexation, as modified by the 9-Ward Plan, does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

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No. 74-201

# In the Supreme Court of the United States

OCTOBER TERM, 1974

CITY OF RICHMOND, VIRGINIA, APPELLANT

*v.*

UNITED STATES OF AMERICA, ET AL.

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA*

## BRIEF FOR THE FEDERAL PARTIES

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## BRIEF FOR THE FEDERAL PARTIES

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### OPINION BELOW

The opinion of the three-judge district court (J.S. App. B) is reported at 376 F. Supp. 1344.

### JURISDICTION

The judgment of the district court (J.S. App. A) was entered on June 6, 1974. Notice of appeal (J.S. App. E) was filed in that court on July 15, 1974. The jurisdictional statement was filed on August 29,

1974. This Court noted probable jurisdiction on December 16, 1974. The jurisdiction of this Court rests upon 42 U.S.C. 1973c.

## QUESTION PRESENTED

Whether the changes in voting practices resulting from a city's annexation of a predominantly white suburb and subsequent adoption of a plan for single-member district councilmanic elections abridge the right to vote on account of race or color, where the original purpose of the annexation had been to maintain a white voting majority in the city's at-large councilmanic elections but (a) the annexation in fact will serve legitimate, nondiscriminatory purposes and (b) the effect of the later adoption of the single-member district plan will be to afford black voters fair representation on the city council.

## STATUTE INVOLVED

Section 5 of the Voting Rights Act of 1965, 79 Stat. 439, as amended, is set forth at J.S. App. D.

## STATEMENT

This action for declaratory judgment was brought by appellant, City of Richmond, Virginia, pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, to determine whether the voting changes caused by the City's 1969 annexation of approximately 23 square miles of neighboring Chesterfield County had the purpose or effect of abridging



the right to vote on the basis of race. The effect of the annexation had been to add 45,705 white residents and 1,557 black residents to the City's population and to change the racial composition of the City from 52 percent black to 58 percent white (J.S. App. B, p. 14b).

1. The annexation was the culmination of separate annexation proceedings instituted by the City in 1961 and 1962 against Henrico and Chesterfield Counties.[1] In 1965, the annexation court awarded the City approximately 16 square miles of Henrico County, with a nearly all-white population of 45,000, in return for the City's assumption of liabilities in the amount of approximately 55 million dollars. The City determined to reject the award and to pursue the Chesterfield County annexation suit, which had been held in abeyance pending resolution of the Henrico County suit.

The City initiated attempts to settle the Chesterfield County annexation suit after its 1968 at-large councilmanic elections. In those elections, three candidates endorsed by appellee Crusade for Voters of Richmond, a black civic organization, were elected to the nine-member city council (J.S. App. B, pp. 10b-11b). This fact, coupled with voting and population projections suggesting that candidates endorsed by

---

[1] The facts relating to the annexation suits are set forth in *Holt* v. *City of Richmond*, 334 F. Supp. 228 (E.D. Va.), reversed, 459 F. 2d 1093 (C.A. 4), certiorari denied, 408 U.S. 931. The parties to this case have stipulated to the record in *Holt* v. *City of Richmond, supra*. See J.S. App. C, p. 2c.

Crusade for Voters might be elected to a majority of the city council seats in the near future, convinced the City's "white political leadership * * * that annexation of part of Chesterfield County was necessary to keep the black population from gaining control of the city in the 1970 elections" (J.S. App. B, p. 11b). The City's settlement negotiations with Chesterfield County reflected this concern (J.S. App. B, p. 13b; footnotes omitted):

> [The City's] focus in the negotiations was upon the number of new white voters it could obtain by annexation; it expressed no interest in economic or geographic considerations such as tax revenues, vacant land, utilities, or schools. The mayor required assurances from Chesterfield County officials that at least 44,000 additional white citizens would be obtained by the City before he would agree upon settlement of the annexation suit. And the mayor and one of the city councilmen conditioned final acceptance of the settlement agreement on the annexation going into effect in sufficient time to make citizens in the annexed area eligible to vote in the City Council elections of 1970.

Only six members of the city council were kept informed by the mayor of the settlement negotiations; the three members who had been endorsed by the Crusade for Voters were not informed of those negotiations, and they learned of the settlement only when it was publicly announced (J.S. App. C, p. 3c).

The City entered into the settlement agreement with Chesterfield County in June 1969, and the



terms of the agreement were adopted essentially verbatim by the annexation court (App. 40-48). The annexation became effective January 1, 1970, and at-large councilmanic elections were held within the City, as expanded by the annexation, in June 1970 (J.S. App. B, p. 14b). As in 1968, of the nine councilmen elected, only three had received the endorsement of Crusade for Voters (*ibid.*).

2. In the following year, Curtis Holt, Sr., a black resident of the City, filed suit against the City in the United States District Court for the Eastern District of Virginia, alleging that the purpose and effect of the annexation was to dilute the voting rights of black citizens, in violation of the Fifteenth Amendment, and requesting de-annexation. The district court determined that the annexation had been motivated by the impermissible purpose of diluting black voting rights. The court concluded, however, that the appropriate remedy was not de-annexation but new councilmanic elections, in which seven councilmen would be elected at large from an area approximately within the City's old boundaries and two from approximately the newly annexed area. *Holt* v. *City of Richmond*, 334 F. Supp. 228 (E.D. Va.). Both Holt and the City appealed. The court of appeals, sitting *en banc*, reversed the finding of a violation of the Fifteenth Amendment (459 F. 2d 1093, 1099):

> For perfectly valid reasons, Richmond's elected representatives had sought annexation since 1961. Those reasons were compelling, so much

> so that, as the District Court found, annexation was "inevitable." * * * If some impermissible reasons crept into the minds of some members of Richmond's Council in 1969, that cannot negate all of the compelling reasons which led them and their predecessors in office to press on the same course in earlier years.

This Court denied certiorari. 408 U.S. 931.

In the meantime, Holt had filed another suit in the same district court, seeking a judgment that the annexation was without legal effect because the City had failed to obtain prior approval as required by Section 5 of the Voting Rights Act of 1965 and requesting that the City's 1972 councilmanic elections be enjoined. *Holt* v. *City of Richmond*, C.A. 695-71-R (E.D. Va.). The injunction was denied by the district court but granted by this Court. 406 U.S. 903.[2]

Contemporaneously with that litigation, the City submitted its annexation plan to the Attorney General of the United States pursuant to Section 5 of the Voting Rights Act of 1965 (App. 20-22). By letter dated May 7, 1971, the Attorney General objected as follows to the voting changes resulting from the annexation (App. 23-24):

> Municipal annexations are, of course, commonly undertaken for a variety of reasons and

[2] The district court subsequently enjoined further elections pending the outcome of the instant litigation. *Holt* v. *City of Richmond*, C.A. 695-71-R (E.D. Va.), Orders of October 12, 1972 and October 9, 1974.



> affect a number of areas of concern to local governments. Section 5 is not addressed to annexations per se; but the Attorney General is obliged under section 5 to be concerned with the voting changes produced by an annexation. In the present instance, the city of Richmond elects representatives to its governing body on an at-large basis; its population is approximately evenly divided between whites and blacks. The submitted change would increase the city's population by approximately 43,000 new residents of whom a very small minority is Negro. In the circumstances of Richmond, where representatives are elected at large, substantially increasing the number of eligible white voters inevitably tends to dilute the voting strength of black voters. Accordingly, the Attorney General must interpose an objection to the voting change which results from the annexation.
>
> You may, of course, wish to consider means of accomplishing annexation which would avoid producing an impermissible adverse racial impact on voting, including such techniques as single-member districts.

3. Following receipt of the Attorney General's letter, the City filed this action in the United States District Court for the District of Columbia, requesting a declaratory judgment that the voting changes incident to its annexation were not adopted for the purpose and did not have the effect of abridging the right to vote on account of race or color (App. 14). A three-judge court was designated to hear the case. Appellees Curtis Holt, Sr., and Crusade for Voters

of Richmond were granted leave to intervene as defendants.

Following the decision in *City of Petersburg, Va.* v. *United States*, 354 F. Supp. 1021 (D. D.C.), affirmed, 410 U.S. 962, holding that the adoption of a single-member district voting plan that ensured black voters fair representation on a city council would remove the discriminatory taint of an otherwise impermissible annexation, the City submitted to the Attorney General and the other parties in this case four alternative plans for establishing single-member district councilmanic elections. The Attorney General concluded that one of the plans would, with some modification, ameliorate the dilutive effects of the annexation sufficiently to satisfy the requirements of Section 5. The City adopted that plan, with the modifications suggested by the Attorney General, in May 1973. The plan as modified provides for the election of one councilman from each of nine wards; four of the wards would have substantial white majorities, four would have substantial black majorities, and the ninth would be approximately 59 percent white and 41 percent black (J.S. App. B, p. 23b).

The City, together with the federal parties, then submitted to the district court a proposed consent judgment that declared that the annexation, as modified by the single-member district voting plan adopted by the City, did not have the purpose or effect of denying or abridging the right to vote on account of race or color (App. 150-153). The intervenors opposed the proposed consent judgment, and the district



court referred the case to a special master for a hearing on the merits. The special master concluded that the annexation was motivated by "an impermissible racial purpose" (J.S. App. C, p. 14c) and that "de-annexation is the only method by which the instant impermissible racial purpose may be cured" (*ibid.*).

The district court, after reviewing the special master's findings and conclusions, denied the City's request for a declaratory judgment. The court stated that since the annexation itself had been motivated by an impermissible purpose, the City was required to prove "that it no longer had * * * a discriminatory purpose in retaining the annexed area after adoption of [the] single-member district ward plan" (J.S. App. B, p. 19b). The court reasoned that to carry that burden the City would have to demonstrate "by substantial evidence (1) that the ward plan not only reduced, but also effectively eliminated, the dilution of black voting power caused by the annexation, and (2) that the city has some objectively verifiable, legitimate purpose for annexation" (J.S. App. B, p. 20b; footnote omitted). The court determined that the City had failed to make either requisite showing. The particular single-member district plan adopted would not, in the court's view, sufficiently eliminate the dilutive effect of the annexation, because whites were virtually assured a five-to-four majority on the city council under that plan, whereas blacks arguably would have had some chance of electing a majority of council members in an at-

large election within the pre-annexation boundaries (J.S. App. B, pp. 23b-27b). The court further sustained the special master's determination that there was no legitimate purpose for retaining the annexed area, on the ground that there was evidence tending to show that the costs of administering the annexed area would exceed the revenues derivable from it (J.S. App. B, pp. 20b-22b).

The court further determined that "[i]n addition to a discriminatory purpose, the annexation also had a discriminatory effect under the *Petersburg* standard since the ward plan was not 'calculated to neutralize to the extent possible any adverse effect upon the participation of black voters'" (J.S. App. B, pp. 27b-28b).[3]

## SUMMARY OF ARGUMENT

This case arises under Section 5 of the Voting Rights Act of 1965, which requires that the City establish that its proposed change in voting practice does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color. The change in voting practice at issue here results jointly from the City's annexation

[3] The district court further stated (with Judge Jones dissenting) that it had jurisdiction to order de-annexation (J.S. App. B, pp. 32b-35b). The court nevertheless refrained from doing so, in part because the question of de-annexation is presented in *Holt* v. *City of Richmond*, C.A. 695-71-R (E.D. Va.). Since the court did not exercise its claimed jurisdiction, we do not here discuss the question whether de-annexation would have been a permissible form of relief.



of a predominantly white suburb and its adoption of a plan for single-member district voting to replace its former at-large voting scheme.

## I

The change in voting practice resulting jointly from the annexation and adoption of the single-member district voting plan will not have the effect of denying or abridging the right to vote on account of race.

In enacting the Voting Rights Act, Congress did not intend to bar all annexations that alter the racial composition of the annexing city. Accordingly, the fact that an annexation to some extent dilutes the effective voting power of one of the racial groups within the pre-annexation boundaries cannot be dispositive of the question whether the annexation has the effect of denying or abridging the right to vote within the meaning of the Act. Although the City's annexation does alter the racial composition of the City, ~~and~~ effect of the change in voting practice is permissible under the Act because (A) the voting change grants black voters the opportunity for meaningful participation in the electoral process and ensures their fair representation in the city government and (B) it does not impair the effective voting strength of the City's black residents.

A. The ward plan adopted by the City was designed to enhance black voting rights and thereby ameliorate the dilutive effect of the annexation. Four

of the nine wards established by the plan have substantial black majorities, and the black voters in those wards presumably will be able to select representatives responsive to their particular needs and concerns. A fifth "swing" ward reflects almost precisely the racial composition of the post-annexation City as a whole. The City's ward plan ensures, as an at-large plan could not, that black voters will be fairly represented on the city council.

B. Since blacks comprised only 44.8 percent of the City's pre-annexation voting-age population, under the City's previous at-large election plan strict racial bloc-voting would have resulted in the election of an all-white slate to the city council. In contrast, as a result of the voting change here at issue, black voters are effectively guaranteed the election of at least four members out of nine. This immediate enhancement of black voting strength balances, in our view, any postponement that the annexation may cause in the emergence of an effective black voting majority in city elections. Thus we believe that the City's change in voting practice has caused no significant dilution in black voting rights.

## II

The change in voting practice does not have the purpose of denying or abridging the right to vote on account of race.

A. The City's immediate purpose in concluding the annexation agreement was impermissible under the Voting Rights Act. The crux of this case con-



cerns the additional showing that the City must make in order to establish that it no longer has a discriminatory purpose in retaining the annexed area. The district court apparently would require the City to show that the *effect* of its change in voting practice will be affirmatively and disproportionately favorable to blacks in order to establish that the *purpose* of this change was not discriminatory against blacks. That, we submit, was improper. In our view, in a case such as this a proper application of the "purpose" test under the Act would proceed as follows: (1) a state or political subdivision subject to the Act may carry its initial burden of coming forward with evidence of permissible purpose either by direct evidence of such a purpose or, in some instances, by establishing that its change in voting practice will have a permissible effect; (2) the burden is then shifted to the Attorney General or other party opposing the voting change to come forward with affirmative evidence of an impermissible purpose; (3) once such evidence is offered, the state or political subdivision then bears the burden of proving that it in fact has an objectively verifiable, legitimate purpose for the change.

B. The City has objectively verifiable, legitimate reasons for retaining the annexed area. Although the timing of the conclusion of the annexation agreement apparently was motivated by impermissible racial considerations, the annexation itself was principally motivated by legitimate goals of urban expansion, in particular by a need to broaden the City's

tax base in view of the high public welfare expenditures required by the growing low-income population within the pre-annexation boundaries. The costs of administering the newly annexed area will be significantly less than the revenues that area will produce. Furthermore, the annexation has enabled the City to maintain racially integrated schools.

However, because the parties at trial did not directly litigate the question whether the City has sound reasons for retaining the annexed area, the City did not develop and present all its evidence relating to that question and the intervening defendants have not had a full opportunity to rebut such evidence. In the circumstances, we believe that it would be appropriate to vacate the judgment below and remand for further consideration of that question.

## ARGUMENT

Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c, provides that a state or political subdivision subject to the prohibitions of the Act may not enforce any change in voting qualification, prerequisite, standard, practice, or procedure unless and until either the proposed change has been submitted to the Attorney General and sixty days pass without his interposing an objection or the United States District Court for the District of Columbia enters a judgment that the proposed change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or



color. The City, as a political subdivision of the State of Virginia, is subject to the prohibitions of the Voting Rights Act. 30 Fed. Reg. 9897.

The extension of a city's political boundary by an annexation "which enlarge[s] the city's number of eligible voters * * * constitutes the change of a 'standard, practice, or procedure with respect to voting' [within the meaning of Section 5 of the Act]." *Perkins* v. *Matthews*, 400 U.S. 379, 388. As the Court explained in *Perkins* (400 U.S. at 388-389):

> * * * [R]evision of boundary lines has an effect on voting in two ways: (1) by including certain voters within the city and leaving others outside, it determines who may vote in the municipal election and who may not; (2) it dilutes the weight of the votes of the voters to whom the franchise was limited before the annexation, and "the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise." *Reynolds* v. *Sims*, 377 U.S. 533, 555 (1964). Moreover, § 5 was designed to cover changes having a potential for racial discrimination in voting, and such potential inheres in a change in the composition of the electorate affected by an annexation.

It is therefore clear that the City may not enforce the change in voting practice resulting from its 1969 annexation, *i.e.*, may not extend the franchise to persons residing within the newly annexed area, until it has complied with the requirements of Section 5.

Prior to its modification by the single-member district voting plan, the City's annexation did not meet the standards imposed by Section 5. The opinion of the district court convincingly demonstrates (J.S. App. B, pp. 10b-14b) that the City's immediate purpose in concluding the annexation agreement was to gain additional white residents in order to maintain a white voting majority in the City's at-large councilmanic elections, *i.e.*, that the immediate purpose of the annexation was the impermissible one of abridging, through substantial dilution, the voting rights of the City's black residents.[4] It is therefore

[4] That finding is amply supported by the evidence recited by the district court and the special master (J.S. App. C, pp. 2c-6c) and is not clearly erroneous. Furthermore, the City errs in contending (Br. 22-23) that under the doctrines of *res judicata* and collateral estoppel that finding was barred by the decision in *Holt* v. *City of Richmond*, 459 F. 2d 1093 (C.A. 4), certiorari denied, 408 U.S. 931, that the annexation did not contravene the Fifteenth Amendment. The court in that case expressly noted that the causes of action arising under the Fifteenth Amendment and the Voting Rights Act were separate and distinct and that it had "no jurisdiction to consider any problem arising under that Act, and what we have said reflects no opinion as to the appropriateness * * * of the Attorney General's objection [to the annexation]." 459 F. 2d at 1100. Moreover, in *Holt* the burden was on the plaintiff to establish that the annexation was motivated by an impermissible purpose, whereas here the burden is on the City to show the absence of any such purpose. See *Georgia* v. *United States*, 411 U.S. 526, 538. This difference in the incidence of the burden of proof "precludes application of the doctrine of collateral estoppel." *One Lot Emerald Cut Stones* v. *United States*, 409 U.S. 232, 235. In any event, none of the federal parties here participated in the earlier *Holt* litigation and they therefore are not barred by *res judicata* or collaterally estopped by any findings in that case. "[L]itigants * * * who never appeared in a prior action * * * may not be collaterally estopped without litigating the issue." *Blonder-Tongue* v. *University Foundation*, 402 U.S. 313, 329.



clear that the City was not entitled to a judgment declaring that the change in voting practice resulting from the annexation *per se* did not have the purpose of denying or abridging the right to vote on account of race.

That, however, was not the issue that the district court was ultimately called upon to decide. After instituting this action, the City, as a result of consultation with the Attorney General, discarded its at-large councilmanic election scheme in favor of single-member district voting, and it amended its complaint in this case to request a declaratory judgment that neither the purpose nor the effect of the change in voting practice resulting jointly from the annexation and the adoption of the single-member district voting plan was to deny or abridge the right to vote on account of race. For the reasons we discuss below, the district court erred in denying that request.

## I

### THE CHANGE IN VOTING PRACTICE RESULTING JOINTLY FROM THE CITY'S ANNEXATION AND SINGLE-MEMBER DISTRICT VOTING PLAN WILL NOT HAVE THE EFFECT OF DENYING OR ABRIDGING THE RIGHT TO VOTE ON ACCOUNT OF RACE

We begin with the proposition that, in enacting the Voting Rights Act of 1965, Congress did not intend to bar all annexations that alter the racial composi-

tion of the annexing city.[5] Typically, the racial composition of a city differs from that of the adjacent suburbs or rural areas, and almost any annexation will have the effect of changing the city's racial composition. A change in racial composition presumably will affect existing political relationships, especially in communities, such as those with which the Voting Rights Act is concerned, where bloc-voting by race is or may be common. Yet nothing in the Act or its legislative history suggests a congressional intent to enwrap the affected cities in the straitjacket of their existing political boundaries.

Thus we believe that the fact that an annexation alters the racial composition in the annexing city, and thereby to some extent dilutes the political power of one of the racial groups within the pre-annexation boundaries, is not dispositive of the question whether the annexation has the effect of denying or abridging the right to vote on account of race. We agree in this respect with the district court in *City of Petersburg, Va.* v. *United States*, *supra*, which stated (354 F. Supp. at 1030; footnote omitted):

> If [a contrary] view of * * * what constitutes a denial or abridgment in annexation cases were to prevail, no court could ever approve any annexation in areas covered by the Voting Rights Act if there were a history of racial bloc-voting in local elections for any office and if the racial

[5] Between January 1971 and June 1974 the Attorney General reviewed 867 proposed annexations pursuant to Section 5 of the Act and objected to only six.



> balance were to shift in even the smallest degree as a result of the annexation. It would not matter that the annexation was essential for the continued economic health of a municipality or that it was favored by citizens of all races; because if the demographic makeup of the surrounding areas were such that any annexation would produce a shift of majority strength from one race to another, a court would be required to disapprove it without even considering any other evidence, and the municipality would be effectively locked into its original boundaries. This Court cannot agree that this was the intent of Congress when it enacted the Voting Rights Act.

In short, the dilution of a racial group's political power through annexation is not, *per se*, in all circumstances, the denial or abridgment of the right to vote on account of race.

The present case does not, in our view, require this Court to address the difficult problem of defining the circumstances under which the dilutive consequences of an annexation amount to the denial or abridgment of voting rights.[6] As we discuss further below (pp. 23-27, *infra*), the voting change here in question has not impaired the effective voting strength of the City's black residents, *i.e.*, the annexation, when considered together with the City's new

[6] That question might be presented where a city with a pre-existing ward voting plan annexes a tract of suburban land. We do not here reach the question of the applicability of the Act's "effect" test in such a situation.

single-member district voting plan, has not resulted in a significant dilution of black political power. But we first show (pp. 20-23, *infra*), that the City's new voting scheme grants black voters the opportunity for meaningful participation and fair representation in the city government. That, we believe, is a necessary prerequisite under the Act for the approval of any annexation.

### A. The City's Single-Member District Voting Plan Grants Black Voters the Opportunity For Meaningful Participation In The Electoral Process And Ensures Their Fair Representation In The City Government

The single-member district voting plan adopted by the City divides the City into nine wards, each of which is entitled to elect one member to the nine-member city council.[7] It is undisputed that the wards were drawn in a racially neutral manner that precluded any invidious racial gerrymandering. The special master found (J.S. App. C, p. 9c):

> 19. The plans [that] Dallas H. Oslin [the City's senior planner] prepared were non-racially drawn. He used the guidelines or criteria of equal components (equality of population in each of nine wards), compactness of each ward, contiguity, likeness of area * * *, following geographical and physical boundaries, and maintaining the integrity of districts and communities of interest within each ward as much as possible.
>
> 20. While Oslin knew generally the black and white neighborhoods in the City, he did not draw his plans with racial divisions in mind. * * * Oslin did not use the census information on race until after the plans were initially drawn.

[7] The wards are roughly equal in population, varying from 26,442 (Ward B) to 29,099 (Ward H)—a maximum percentage variation of less than 10 percent (App. 162). See *Mahan* v. *Howell*, 410 U.S. 315, Gaffney v Cummings, 412 U.S. 735.



This is not, however, to say that the City, in formulating its voting plan, was insensitive either to the legitimate interests of its black citizens in securing fair representation or to the importance of minimizing any dilution of black voting strength resulting from the annexation. The City submitted four alternative plans to the Attorney General and consulted with the Department of Justice concerning those plans. The Department of Justice selected the plan it regarded as most favorable to black voters and suggested certain modifications that would further enhance black voting rights and thereby ameliorate the dilutive effect of the annexation. The City made the suggested modifications and adopted the plan as modified.

The voting plan adopted by the City grants black voters the opportunity for meaningful participation in the electoral process. Four of the nine wards established by the plan have substantial black majorities.[8] The black voters in those wards will presumably be able to select representatives responsive to

[8] The racial composition of each ward is set forth at App. 162.

their own needs and concerns. As the district court in *City of Petersburg, Va.* recognized (354 F. Supp. at 1027):

> * * * [T]he election from single-member districts of a number of governmental representatives to a body composed of several members * * * has the effect of making the representatives from the single districts more responsive to the special interests and characteristics of the individual district.

In contrast, under an at-large voting scheme in a community characterized by racial bloc-voting, the majority race, if cohesive, could deny the minority race any meaningful participation in the electoral process. In such cases, the votes cast by black voters, if they are in the minority, may be essentially wasted. That is not the situation here. Under the City's ward plan, black voters, although in the minority, will not cast futile votes; they will elect councilmen who can be anticipated to be concerned and active on behalf of their black constituents.

Moreover, and more importantly in the context of this case, the City's voting plan ensures black voters fair representation on the city council. Blacks constitute only 42 percent of the City's total post-annexation population, and only 37.3 percent of its voting-age population (App. 61; J.S. App. B, p. 26b). Under a perfect system of proportional representation, in an election conducted strictly along racial lines, black voters in the City could elect at most four (44.4 percent), and probably only three (33.3 percent), of the



nine members on the city council. Yet under the City's single-member district voting plan, candidates supported by black voters would be assured four council seats in such an election. Thus the City's voting plan ensures black voters that their representation on the city council will be as great or greater than their representation on the voting lists and the population at large.

### B. The City's Change In Voting Practice Has Not Impaired The Effective Political Strength Of Its Black Residents

Although blacks constituted 52 percent of the City's total pre-annexation population, they comprised only 44.8 percent of its voting-age population (App. 61; J.S. App. B, pp. 23b-24b and n. 54). Under the City's at-large councilmanic election scheme, strict racial bloc-voting would have resulted in the election of an all-white slate to the city council.[9] In contrast, as a result of the annexation and the adoption of the single-member district voting plan, black voters are effectively guaranteed the power to elect at least four

---

[9] In fact, three candidates—two white and one black (App. 175-176)—supported by appellee Crusade for Voters, a black civic organization, were elected in both 1968 and 1970 (see pp. 3-5, *supra*). One reason for this is that "'[w]hile in 1968 there were more whites than Negroes registered to vote, about 50% of the registered Negroes voted as against approximately 30% of the white registered voters'" (J.S. App. B, p. 10b). This suggests that many potential white voters apparently did not view control of the city council as a matter of concern or as a question of racial competition. But for analytical purposes, racial bloc-voting (stated by the district court to have been "evident" (J.S. App. B, p. 10b)) will here be assumed.

members to the council. Accordingly, the change in voting practice at issue here would, if anything, enhance, rather than decrease, the effective political strength of the City's black residents.

The district court, however, concluded that any such enhancement would be at best only temporary (J.S. App. B, pp. 23b-24b):

> The fact that the percentage of Richmond blacks of voting age is appreciably less than the percentage of blacks in the total population of course means that there are proportionally more black youngsters. We, like the white political leadership of Richmond, can anticipate that the present black population majority within Richmond's old boundaries will translate in a few years into a voting-age majority.[10]

We do not believe that, on the facts of this case, the City's change in voting practice should have been disapproved on the basis of such speculation about future demographic shifts in the City's population.

---

[10] The district court further stated that "[i]n an at-large system such a [black] majority would ensure that none of the nine City Council seats was occupied by a candidate who appealed only to a white voting bloc, ignoring the needs and aspirations of Richmond's black citizens" (J.S. App. B, p. 24b). An apparent implication of this statement is that the district court would have disapproved the adoption of a single-member district voting plan even in the absence of an annexation, on the ground that such a plan would, by ensuring the election of some city councilmen who would represent predominantly white wards, hamper full effectuation of the political dominance of an emerging black majority. We do not believe that a single-member district voting scheme would deny or abridge black voting rights merely by ensuring a white voting minority fair representation in city government.



The City's demography and racial composition will of course change over time, and it may be expected that this change, at least within the City's pre-annexation boundaries, will be in the direction of a black voting-age majority. Yet it is not entirely obvious that the City's black voters would have had a more imminent opportunity to elect a majority of the city council under its pre-annexation at-large voting scheme than they do under the City's post-annexation ward plan. No demographic projections were introduced to show when, if ever, a 52 percent black population majority might be transformed into a black voting-age majority; certainly it is not inconceivable that net out-migrations of young blacks, or net in-migrations of older whites, could result in an indefinitely prolonged period during which whites retained majority voting power.

Similar uncertainties pertain to the City's post-annexation ward plan. Four of the wards have substantial, *i.e.*, more than 64 percent, black population majorities (App. 162). A fifth ward (Ward H) presently is 59.1 percent white and 40.9 percent black (*ibid.*). The black voting-age minority in that ward is 38.5 percent (J.S. App. B, p. 26b). Thus Ward H reflects almost precisely the racial composition of the post-annexation City as a whole (see p. 22, *supra*). But Ward H also is an area in transition. Almost completely white in 1950 (see App. 58, 161), Ward H has since that time experienced a substantial inflow of blacks (see App. 59, 60). This trend presumably will continue and may even accelerate. It is

therefore possible that Ward H could have a black voting-age majority even before such a majority is attained within the City's pre-annexation boundaries. All of this is of course merely speculation about an unknowable future. We advance it only to show that the district court's own demographic projection, although superficially persuasive, is not based upon irrefragable logic or even upon an informed weighing of probabilities.

We assume *arguendo* (and, indeed, this would be our own guess) that the annexation, even coupled with the adoption of a single-member district voting plan, probably will postpone the emergence of an effective black voting majority in the City's councilmanic elections. This consequence is, however, in our estimation, balanced by the immediate enhancement of black voting strength that has resulted from adoption of the ward plan. Thus we believe that the City's change in voting practice has caused no significant dilution in black voting rights. In these circumstances, we think it clear that that change does not have the effect of denying or abridging the right to vote on account of race.

In reaching this conclusion we are cognizant of the fact that, as appellee Crusade for Voters has shown (see J.S. App. B, pp. 29b-30b), the City could have devised a ward plan that would have significantly increased the likelihood that a "candidate supported by blacks * * * [would] be elected to the critical fifth seat on the City Council" (J.S. App. B, p.



30b).[11] The district court cited the existence of such an alternative plan as a basis for holding that the City's change in voting practice had the effect of denying or abridging the right to vote on account of race. We disagree. Application of the "effect" test under the Act to annexations does not require disproportionate maximization of black voting rights, at least where, as here, there has been no significant dilution of black voting strength.

## II

## THE CHANGE IN VOTING PRACTICE DOES NOT HAVE THE PURPOSE OF DENYING OR ABRIDGING THE RIGHT TO VOTE ON ACCOUNT OF RACE

### A. The City Need Not Adopt A Ward Plan That Disproportionately Maximizes Black Voting Rights In Order To Establish A Permissible Purpose For Retaining The Annexed Area

Purpose may in part be inferred from effect. The fact that a change in voting practice will not have the effect of denying or abridging the right to vote on account of race suggests that no such denial or abridgment was intended. But the Act imposes two tests, not one; a separate inquiry into purpose is necessary. Moreover, the inference from effect could in no event be dispositive here, for it is clear that the City's immediate purpose in concluding the annexation agreement was impermissible under the Act. See pp. 14-17, *supra*. The crux of this case concerns

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[11] Under the plan submitted by Crusade for Voters, the City's "swing ward" would be 59.0 percent black, whereas Ward H currently is 40.9 percent black (App. 162, 165).

the additional showing that the City must make in order to establish that it "no longer [has] * * * a discriminatory purpose in retaining the annexed area" (J.S. App. B, p. 19b).

The district court required the City to show that its "ward plan not only reduced, but also effectively eliminated, the dilution of black voting power caused by the annexation" (J.S. App. B, p. 20b; footnote omitted). We are uncertain what that test, read in the abstract, would require. If it requires only a showing that effective black political power will not be significantly diluted, we believe that it has been satisfied here. See pp. 23-27, *supra*. But as we read the district court's opinion, the court's test requires the City to adopt a ward plan that would result, or be likely to result, in a black majority on the city council. Yet blacks constitute a minority of approximately 42 percent within the City's post-annexation boundaries and were not even a voting-age majority within the pre-annexation City (J.S. App. B, pp. 14b, 23b-24b). They are not entitled to the substantially disproportionate majority representation called for by the opinion below.

The district court's discussion of the "purpose" test reduces to a fundamental contradiction: the only ward plan that the court's opinion permits would itself have required deliberate, substantial racial gerrymandering in favor of blacks—a purpose and effect that would be of questionable validity under the Voting Rights Act. The court's holding places upon the City the burden of showing not only that the City's change in voting practice will not have the



effect of denying or abridging black voting rights but also that it will, in practice, disproportionately favor black votes, *i.e.*, that it will have the effect of denying or abridging white voting rights.

The error in the district court's analysis stems from a confusion of purpose with effect. The court required the City to show that the effect of its change in voting practice will be affirmatively and disproportionately favorable to blacks in order to establish that the purpose of the change was not discriminatory against blacks. That, we submit, was improper. In our view, in a case such as this a proper application of the "purpose" test would proceed as follows: (1) a state or political subdivision subject to the Act may carry its initial burden of coming forward with evidence of permissible purpose either by direct evidence of such a purpose or, in some instances, by establishing that its change in voting practice will have a permissible effect; (2) the burden is then shifted to the Attorney General or other party opposing the voting change to come forward with affirmative evidence of an impermissible purpose; (3) once such evidence is offered, the state or political subdivision then bears the burden of proving that it in fact has an objectively verifiable, legitimate purpose for the change. In short, the "purpose" test under the Act requires a showing of permissible purpose but not, as the district court apparently believed, of an over-compensatory effect.

**B. The City Has Objectively Verifiable, Legitimate Reasons for Retaining The Annexed Area**

The district court observed that "[t]he City apparently was moved in 1962 to file its annexation suit against Chesterfield County by legitimate goals of urban expansion" (J.S. App. B, p. 16l). The record supports that observation. For example, the City's Director of Planning and Community Development testified (App. 364, 365, 367-368):

> There were serious problems the city faced if annexation did not occur. The most physical, obvious, tangible reason for annexation is the urgent need for additional vacant land There is a serious shortage in the City of Richmond for vacant land. It is needed for housing. * * *
>
> Land was needed to allow expansion of commercial and industrial development. Land was needed if redevelopment and renewal were to in fact occur. * * *
>
> * * * * *
>
> Another need for annexation was to reapture the spill over that had occurred across he corporate line. In fact, * * * the old corporate limits no longer included the real city. * * *
>
> * * * * *
>
> Because someone moves to our communty and finds the home of his liking maybe two or three blocks beyond an annexation line of some previous annexation Court, to me that does not say at all that he has no responsibility for the welfare or the housing, the construction of public housing or the airport or the mair library or many of the other central city expenses that



> [should] in fact be borne by the total community. Conversely, there are problems in the county that I think city residents equally should share in finding the solution to. * * *

City Manager Alan F. Kiepper elaborated on the socio-economic reasons underlying the City's efforts to annex adjoining suburban communities (App. 369, 370-371, 373):

> I think there are three principal reasons why Richmond needed to expand its boundaries. The first of these dealt with the population imbalance * * *. The city was becoming a place of the very old and the very poor. It was losing its young affluent, what I called the leadership group. * * *
>
> * * * * *
>
> The second major factor * * * was the need for vacant developable land.
>
> * * * * *
>
> The third reason * * * has to do with the increasing cost of government. This relates directly to the changing character of the population. We find expenditures for public health, public welfare, police, recreation, education, all have expanded and to a large extent these increases are directly related to the growth of low income population. * * *
>
> * * * * *
>
> It is perfectly obvious that if the trends toward an increase in low income, dependent people, continues, and the more affluent continue to move out of the city, that the [increasing] costs of government in the city and the [diminishing]

> resources available in the city to pay these costs are going to result or could conceivably result in fiscal bankruptcy.

It is, moreover, clear that even as late as 1965 racial considerations as such played little or no role in the City's annexation plans, for in that year the City was offered, and rejected on purely fiscal grounds, an annexation of approximately 16 square miles of Henrico County with a virtually all-white population of 45,000. See p. 3, *supra*. On the other hand, the evidence is persuasive that racial considerations determined the terms and timing of the annexation agreement hastily concluded by the City after its 1968 councilmanic elections. See pp. 3-5, 16-17, *supra*. That agreement was entered into for the impermissible immediate purpose of using the City's at-large councilmanic election scheme to deprive black voters of any real voice in local government.

Since the annexation guarantees the continuance of a white voting-age majority in the City under any fair voting scheme, the mere conversion from at-large voting to a single-member district scheme that ensures fair representation does not, standing alone, establish that the City has any legitimate reasons, permissible under the Act, for retaining the annexed area. We therefore agree with the district court that in order to establish that the City "has purged itself of a discriminatory purpose in an annexation of new voters, it [must demonstrate] by substantial evidence * * * that [it] has some objectively verifiable, legitimate purpose for annexation" (J.S. App. B, p. 20b).



The district court held that the City had failed to make such a demonstration (J.S. App. B, pp. 20b-22b). In so holding, the court relied upon the special master's findings (J.S. App. C, pp. 11c-12c) that the annexation would prove fiscally burdensome to the City. We believe that those findings, which were based solely upon the interested testimony of the County Administrator of Chesterfield County (see J.S. App. C, p. 12c), were clearly erroneous. The evidence amply supports the City's contention that the cost of administering the newly annexed area will be significantly less than the revenues it will produce. See Appellant's Br. 53-59. Moreover, the district court gave insufficient weight to the substantial and legitimate reasons that underlay the City's long annexation quest. As the court of appeals observed in *Holt* v. *City of Richmond*, *supra*, 459 F. 2d at 1099:

> For perfectly valid reasons, Richmond's elected representatives had sought annexation since 1961. Those reasons were compelling, so much so that * * * annexation was "inevitable".

Perhaps the district court's greatest error was in ignoring the significance of the annexation to the City's school system, which is separate from the school systems in the adjoining counties. The City Manager testified that the annexation has enabled the City to maintain racially integrated schools (App. 386-387):

> I wanted to comment on the effect on the school system of de-annexation.

The ratio of white to black students in the Richmond public schools has been decreasing for many years. This current school year has seen a loss of some 4,000 white students. De-annexation will require immediate and major additional changes to the City's programs for school assignment, or it will preclude the maintenance of a reasonably integrated system.

Although exact data is not available at this time because spot maps have not yet been prepared, upon de-annexation it is the best estimate of the Superintendent of Schools that the school's enrollment or the average daily membership in the Richmond public schools would drop from approximately 45,000 to approximately 39,000, or a loss of some 6,000 students.

Virtually all of whom would be white. This would result in a school system with a ratio of 80 percent black and 20 percent white, and such a ratio would make it impossible to maintain any kind of reasonable semblance of a unitary school system within the remaining City.

And the court of appeals in *Bradley* v. *School Board of City of Richmond, Virginia*, 462 F. 2d 1058, 1064 and n. 6 (C.A. 4), affirmed by an equally divided court *sub nom. Richmond School Board* v. *Board of Education*, 412 U.S. 92, stated that the annexation "has resulted in adding to the school population of Richmond 10,240 pupils, of which approximately 9,867 are white" and that "[t]he district court's concern with viable racial mix has been partly alleviated by this annexation * * *."

We believe that the evidence in the record would support a finding that the City has objectively verifiable, legitimate reasons for retaining the annexed area. However, the parties at trial did not directly litigate that question. The parties, including the federal parties, concentrated on the extent to which the City's ward plan minimized the dilutive effects of the annexation, *i.e.*, on the permissibility of the effect of the voting change under *City of Petersburg*, and not on the nondiscriminatory purposes that might justify retention of the annexed area. Thus the City did not develop and present all its evidence relating to such purposes, and the intervening defendants have not had a full opportunity to rebut such evidence. Accordingly, we believe that it would be appropriate to vacate the judgment below and remand the case for the taking of additional evidence on the question whether the City now has a legitimate purpose in retaining the annexed area and for the making of new findings on that question under proper legal standards.



## CONCLUSION

The City's change in voting practice will not have the effect of denying or abridging the right to vote on account of race. The question whether that change has the purpose of so denying or abridging the right to vote turns upon whether the City now has objectively verifiable, legitimate reasons for retaining the area it has annexed. The judgment below should be vacated and the case remanded to the dis-

trict court for the taking of additional evidence and the making of findings pertinent to that issue.

Respectfully submitted.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-201

CITY OF RICHMOND, VIRGINIA,
*Appellant,*

v.

UNITED STATES OF AMERICA and
WILLIAM B. SAXBE, ATTORNEY GENERAL, and
CURTIS HOLT, SR. et al. and
CRUSADE FOR VOTERS OF RICHMOND, et al.,
*Appellees.*

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

## BRIEF FOR APPELLEES, CURTIS HOLT, SR., et al.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

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**No. 74-201**

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CITY OF RICHMOND, VIRGINIA,
*Appellant,*

v.

UNITED STATES OF AMERICA and
WILLIAM B. SAXBE, ATTORNEY GENERAL, and
CURTIS HOLT, SR. et al. and
CRUSADE FOR VOTERS OF RICHMOND, et al.,
*Appellees.*

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ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF COLUMBIA

---

## BRIEF FOR APPELLEES, CURTIS HOLT, SR., et al.

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## OPINION BELOW

The opinion of the special three-judge District Court for the District of Columbia is reported at 376 F.Supp. 1344 (DDC 1974). Copies of the judgment and the

opinion of the District Court, the Findings of Fact and the Conclusions of Law of the Special Master appointed by that court are found in Appendices A, B, and C of Appellant's Jurisdictional Statement.

## JURISDICTION

The judgment of the District Court was entered on June 6, 1974. Notice of Appeal was filed July 15, 1974. The Jurisdictional Statement was filed August 29, 1974. Probable jurisdiction was noted December 16, 1974. Jurisdiction to review by direct appeal is conferred by 42 U.S.C. § 1973c (1970).

## STATUTE INVOLVED

Section 5 of the Voting Rights Act, as amended by Act of June 22, 1970, 84 Stat. 315, 42 U.S.C. § 1973c (1970), is set forth in Appendix D to Appellant's Jurisdictional Statement.

## QUESTION PRESENTED

Whether the District Court properly found that Appellant failed to prove (in its suit for Declaratory Judgment) that a compromised annexation (even as modified) of an adjacent county did not have the purpose and would not have the effect of denying or abridging the right to vote on account of race or color, where: (a) the original purpose of the annexation had



been to maintain a white majority in the City's at-large elections; (b) there was and is no objectively verifiable, legitimate purpose or reason for, or justification to retain the annexation, and; (c) the suggested modification substantially limits the pre-annexation voting potential of the black citizens, further polarizes the races, and does not to the extent reasonably possible eliminate the impermissible effect, and itself serves an impermissible purpose.

## STATEMENT

### I.

### INTRODUCTION

The City of Richmond, Virginia, is a political subdivision of the Commonwealth of Virginia, subject to the provisions of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973(c).

The factual setting is simple. The white power structure of Richmond was fearful of losing control over city government because of the growth of black voting strength. They purposely compromised a pending annexation to quickly secure 45,000 new white citizens in time to dilute the black vote enough to maintain political control. There were no other reasons for acceptance of the compromised annexation.

The appellant then knowingly and wilfully failed to seek Section 5 approval. After being refused assistance from the Department of Justice, appellees Holt, et al. filed a Fifteenth Amendment suit to challenge their

disenfranchisement and later (December 1971) filed a Section 5 suit. On appeal (May 1972) the Fourth Circuit, after first specifically excluding *any* Section 5 considerations, reversed the District Court. Appellees reactivated their separately filed Section 5 suit and sought to enjoin any further elections. This Court granted that injunction in April of 1972. Days before the motion for summary judgment was to be heard in that Section 5 suit, appellant filed for approval in the court below in this action. The Section 5 local District Court stayed action on the motion for summary judgment pending a decision by the court below in this action. After the taking of extensive evidence, and its consideration by a Special Master and the court below, appellant's belated request for approval of its voting change was denied.

The Holt appellees' action in the local District Court to enjoin further enforcement of the annexation is still pending.

## II.

## GENERAL BACKGROUND

Unlike all other states in the Union, Virginia law makes each city and county a separate, distinct, political subdivision. The City of Richmond is surrounded by two counties. Henrico County wraps around the city to the north from east to west, while Chesterfield County wraps around the city to south from the west to east.



There are only two ways for a Virginia city to expand its population other than by birth and immigration. It must seek either to merge with an adjacent county or it must seek to capture that population contained within adjacent geographical areas by way of Virginia's annexation statutes. Va. Code Ann. § 15.1032 *et seq.*

The city captured an additional 47,262 citizens (only 555 of whom were black) contained in a twenty-three square mile area (J.A. p.61) when in July 1969 a three-judge state annexation court approved and adopted verbatim all terms and conditions of a compromise agreement between the white councilmen in control of the city and the County of Chesterfield in settlement of the suit by the city against the county. (H. Tr. 179).

There are fifteen elected officials of the City of Richmond, to-wit: City Treasurer, Commissioner of Revenue, City Sheriff, Attorney for the Commonwealth, Clerk of the Circuit Court, Division I, Clerk of the Circuit Court, Division II, and nine members of City Council. (J.A. p.260)

## III.

## ATTEMPTS BY CITY AT POPULATION EXPANSION

### 1. Merger

In 1960, the City of Richmond and County of Henrico entered into negotiations from which evolved a

plan of merger of the two political subdivisions. (H. Tr. Vol. 3, 364-65).

In seeking support from county leaders, city officials stressed a theme that without merger the city would become a city of old, poor, and black, and laid special emphasis on the "problem" of the growing black population. (H. Tr. 236-37).

The black citizens were specifically concerned with expansion in that it would dilute what little control, influence, and participation they had been able to achieve in the political process. (H. Tr. 53-4)

The merger plan was rejected due to a large negative vote in the county by referendum December 12, 1961. In the city, 100% of the black voter precincts voted against the merger; 68% of the racially mixed precincts voted against the merger, and; 95.7% of the white precincts voted for the merger. (J.A. p. 76)

On December 26, 1961, the city exercised its second option to achieve population expansion and adopted ordinances to proceed with annexation suits against Henrico and Chesterfield. (HCX 9[a] [b])

**2. The Henrico Annexation Case:**

On April 27, 1964, the Henrico Annexation Court awarded the City 45,310 citizens, 98.5% of whom were white. During this time, no action was taken to proceed with the Chesterfield annexation case.

Cities in Virginia may raise monies for operations by the issuance of bonds and the collection of taxes. Virginia municipal bonds can be of two types: general obligation bonds and revenue bonds. Revenue bonds can only be used for capital improvements which generate revenues such as utility expansions. Subsequent



to the award, it was discovered that the City Charter did not allow the issuance of general obligation bonds to pay for the costs of annexation. (H Tr. Sept. 24, 19-20) Consequently, the city rejected the Henrico annexation award on March 8, 1965. (Tr. 691, Sept. 24, 12)

**3. Interim Period Between Henrico and Chesterfield Trials**

Shortly after the rejection of the Henrico annexation award, officials of the city, representing white interests, contacted officials of Chesterfield County to discuss the dormant Chesterfield case, now some four years stale (having been filed at the same time as the Henrico suit) in order to effect a compromise of the pending suit. H Tr. 92, 146) The *sole* basis for negotiations with the county officials was the number of *white citizens* they could expect to receive. A base figure of 44,000 was proposed by the city officials. (H Tr. 151, 152, 94-95)

These negotiations bore no fruit.

November 5, 1965, the city revived the dormant suit, which was dismissed on March 25, 1966. The appeal took a leisurely course, consuming 17 months and 14 days, before a decision was handed down by the Supreme Court of Appeals of Virginia on September 8, 1967, reversing the dismissal. (*City of Richmond v. County of Chesterfield,* 208 Va. 278 [1967]) The parties agreed to a moratorium on proceedings through June 15, 1968, while the Virginia General Assembly was in session.

Trial on the merits was begun September 24, 1968.

**4. Contemporaneous Events During the Interim Period**

There has been a long history of racial segregation and discrimination in the City of Richmond. By various devices in the past, black citizens have been restricted in their ability to participate fully in the political arena by official and unofficial limitations on their voting and political participation. (H Tr. 9, 12, 16, 17, 18, 19) Vast changes were being wrought in the voting strength of the black citizens of Richmond during the interim period following the repeal of the poll tax. Two political forces began to emerge. Richmond Forward was the white voter organization. The black voter organization was known as the Crusade for Voters. (H Tr. 9) Voting patterns in the City of Richmond have always followed racial bloc voting and continue to do so today. (MTR 544, 545, 583, 584) The 1966 Councilmanic elections were the first elections held after the lifting of the poll tax. (H Tr. 25) For the first time two candidates not supported by the white voter organization but supported by the black voters were elected to City Council. The rapid and effective growth of the black voting power was known to the white voter organization which conducted surveys and analysis of the 1966 and 1968 elections. (J.A. p. 78, 104; HHX 5a and b)

In response, legislation was introduced in the next legislative session (1968) to force merger of Richmond, Henrico and Chesterfield by the formation of a commission later known as the Aldhizer Commission. (H. Tr. 663, 209, 223) This commission considered its role as that of preventing Richmond from becoming black controlled by increasing the number of white



voters in the city through forced merger. (H. Tr. 212, 214, 217, 218, 220, 221, 223) Just prior to the first meeting of the commission, the 1968 Councilmanic elections were held and the black citizens again increased their representation, this time to three numbers. (HHX 39: H. Tr. 210) White city officials urged merger of Chesterfield and the surrounding counties through the commission, expressing fear of a black takeover by at least the next Councilmanic election scheduled for 1970. (H. Tr. 21, 213, 216, 223)

**5. The First Chesterfield Trial on the Merits**

Meetings of white officials with County officials continued on an irregular basis since 1965, with the aim of settling the suit. In all meetings, the city maintained a consistent position that required all negotiations to center on and be concerned with the number of white people that the city would receive by settlement. All economic, geographical and other considerations were simply not discussed or were brushed aside. In the words of the City Manager, the City had to "balance the population." The acceptable minimum number remained relatively constant at 44,000 people. The city was careful to ascertain from county officials the racial percentage figures relevant to its stance in the negotiations. The meetings bore little fruit. (Tr. 92-112; 146-179; 584)

On January 9, 1969, the presiding judge declared a mistrial and disqualified himself. (Tr. 111)

**6. Events Between the First and Second Trial: Compromise**

Shortly after the mistrial, a special session of the Virginia Legislature met to draft and adopt a new

constitution for the State. The Aldhizer Commission introduced a bill, commonly referred to as the Aldhizer Amendment, to create a third and new method of increasing the population of the city. The Amendment allowed the state legislature to expand Richmond's boundaries every ten years. (H. Tr. 117) Passed during this session of the legislature was a bill amending the City Charter of Richmond to allow general obligation bonds to be used to pay for the costs of annexation (H. Tr. 40, 42, 64-66), thereby removing the problem which had aborted the Henrico annexation. City officials lobbied extensively for the Constitutional Amendment on the ground that should the Amendment fail, the city would go black, i.e., the plaintiff class would elect sufficient representatives to control the city by at least the next election scheduled for June of 1970. (H. Tr. 222, 223, 143) The Aldhizer Amendment passed but had to be passed again at the next session (1970) before becoming law. (Tr. 223)

Subsequent to its passage, negotiations resumed and continued into the second trial on the merits. No line was actually drawn until the Mayor of the city, Mr. Bagley, had assurances that at least 44,000 white people would be given up by the county. On May 15, 1969, Mr. Bagley and Mr. Horner, chairman of the County Board of Supervisors, drew a line (commonly called the Horner-Bagley Line) which encompassed the required number of white people. (H. Tr. 120, 174)

At the time the agreement was formalized, the City Council and the Mayor had no information by which they could evaluate in any respect a compromise line agreement, other than its size and the number of people it contained. (H. Tr. 119, 120, 172, 178, 194, 234,



319-21, 356, 428, 445, 524, 575, 577, 581, 582, 584, 585-86, 710, 711; Sept. 24, 148, 155, 156, HHX 13 and 15) Mr. Talcott, the City Boundary Expansion Co-ordinator who gathered and had available all information concerning vacant land, economics, tax, schools, utilities, etc., was not consulted for any information whatsoever concerning a compromise by either the Mayor, the City Council, or the attorneys in the suit, until after the compromise had been reached. In fact, Mr. Talcott was not even aware such a compromise had been reached until some eleven days after the fact (H. Tr. 436)

**7. The Compromise (Annexed Area) Was An Economic and Administrative Loss**

A former councilman, who was knowledgeable in the city affairs, head of a leading regional financial firm (Wheat & Co.) intimately connected with municipal finances, and a participant in almost all the compromise negotiations prior to formulating the Horner-Bagley Line, argued strenuously against the agreement on the grounds that the agreement gave the city no vacant land and nothing but people. (H. Tr. 34, *et seq.*)

Prior to the compromise, the City had 6.6% net vacant land. (ATR Vol. 2, p. 6) After the compromise annexation, the city had 6.53% net vacant land. (See table p. 31 herein) The annexed area costs the city 23.8 million dollars a year against total income of between 14.5 to 21 million dollars. Thus, the city annually loses an average of 9.5 million dollars. (see table p. 36 herein)

**8. The Appeal Problem: Protect the 1970 Election**

At all times, and in all such negotiations leading to the compromise, the Mayor was in constant contact with the six white Councilmen for his negotiating authority. These white representatives, however, systematically excluded from their meetings and conferences all council representatives of the black citizens. The latter knew nothing of the compromise, of the policy questions involved in it, or of the Aldhizer Amendment until after these matters became public knowledge. The exclusion continued throughout the trial of Holt I to the extent that even the attorneys for the city failed to consult or advise this council minority on any facets of the respective cases. (H. Tr. 64-68, 69-71, 81, 102, 215-216, 226, 227, 241, 350, 353, 423, 424, 433-35, 563, 567, 570-72, 611-14, 619-21; Sept. 24, 39)

Time was not of the essence. (H. Tr. 110-111) Under Virginia appeal procedure, appeals have four months in which to be filed and normal procedures required a total of five months before the appeals court would be in a position to decide if it would hear the appeal. (Rules of Supreme Court of Appeals, Rule 5:4, Va. Code §§ 8-475 and 8-463) If a court decision was not reached by July, the appeal could well run into 1970 on procedural steps alone before a decision of any sort could be rendered. The trial was still proceeding and all parties agreed it would be the end of June before the suit's original parties rested, with the intervenors yet to be heard from.

In Virginia, annexations can only take effect on the first day of each year. If delayed, the annexation would not become effective until after the next scheduled



election in 1970. (H. Tr. 649-50) White representatives were fearful that should they lose control of Council, a black controlled Council would drop the case, or refuse to accept an award of the Court or the compromise. (H. Tr. 23, 25-26)

Accordingly, on June 11, 1969, Mr. Bagley and his attorney, Mr. Davenport, met with Mr. Horner and his attorney to firm up the agreement, for the expressed purpose of assuring that the annexation would take effect January 1, 1970, in order that the newly acquired white citizens could vote and thus protect white control of the next scheduled election for City Council set for June 1970.[1] (Tr. 172-179)

**9. The Decision of the Annexation Court**

The second annexation trial had begun the same day the Horner-Bagley Line was agreed upon: May 15, 1969. The court itself had allowed racial testimony and was aware of the city's fear of a growing black population (H. Tr. 136-138, 642-43), as evidenced by its opinion when it stated: "Obviously cities must in some manner be permitted to grow . . . in population or they will face disastrous social problems." The

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[1] It is significant to note that as early as August of 1971, attorneys for the City, Edwards, Mattox and Davenport, knew of the testimony surrounding the compromise and the Aldhizer hearings and the part they themselves had played in them. Yet these key witnesses, whose involvement in the entire matter traceable from the very beginning, have remained as counsel of record in this case, Holt I nd II and failed to offer themselves as witnesses at any point to rebut or contradict this evidence, and even today remain so cloaked in silence.

annexation court also recognized that it "exercised not only judicial, but also some legislative functions." (J.A. p. 40, HCX 20[a]) The annexation court also noted that the compromise was unprecedented in an annexation suit and stated that while it was not bound by such compromise legally, it was so bound in practice, when it said:

> After mature consideration, we feel that the agreement is entitled to great weight. It must be remembered that the parties to the agreement perform the legislative functions of their governments as duly elected representatives for the people. When they decide that their constituents are benefiting by an action, such a decision should not be treated lightly . . . The acquisition of . . . some 43,000 people would solve many of the City's problems both now and for some time to come . . . In sum, we believe that the boundary line set forth in the agreement should be the annexation line and that all terms and conditions specified should constitute the conditions of annexation *verbatim*, and we so adjudge and decide. [emphasis added]

Thirteen days prior, the court had agreed to the compromise in a secret conference, saying, "let us hear the protestors [intervenors] and then you can tell us what your agreement is and *we can make our decision accordingly*, and in that way the intervenors won't feel like they have been kicked around or left out . . ." [emphasis supplied] (J.A. p. 40, HCX 20[a], ATR p. 3234-20)

In a secret meeting the court itself recognized the doubtful propriety of what it was doing when it said, "I just don't want the press getting hold of what we



have been talking about in here because the whole thing will just – it would be wrong." (ATR p. 3234-19)

**10. The Appeal**

The notice of appeal was filed by the intervenors on the last permissible day, September 10, 1969. (HCX 24) The petition for a writ of error was filed five days before the last deadline on November 7, 1969. The city's brief in opposition was filed on November 12, 1969, the reply brief on November 20, 1969, a Thursday. The next day, counsel were notified to argue the following Monday afternoon on November 24th. The court denied the petition on November 26, 1969.[1]

A stay was filed for by the appellants on December 19, 1969, and denied that same day. An application for a stay was then made to the United States Supreme Court which was denied by Mr. Justice Douglas on December 31, 1969.

The following day, January 1, 1970, the annexation took effect.

Prior to January 1, 1970, the racial composition of the City of Richmond had been 52% black and 48% white. Subsequent to January 1, 1970, the racial composition was exactly as it had been January 1, 1960, i.e., 42% black and 58% white. (J.A. p. 61, HHX 2)

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[1]This was the only time in the history of the Virginia Supreme Court that certiorari was denied in an annexation case. This was the only annexation case that was ever compromised and settled. The average waiting period between briefing and argument until decision on cert. ranges between 2-6 months in the Virginia Supreme Court.

### 11. The Next Election: 1970

On June 10, 1970, a Councilmanic election was held which included the newly annexed voters without the City's having secured approval under Section 5 of the Voting Rights Act of 1965. The black citizens elected three representatives. Had the annexed votes not been counted, four representatives of the black citizens would have been elected, giving them fiscal control of the City Council (appropriation measures must be approved by at least six votes). (H. Tr. 27, 78-79)

## IV.

## COURSE OF LEGAL PROCEEDINGS

On February 24, 1971, Curtis Holt, Sr., a Negro citizen of the City of Richmond, filed a class action against the City of Richmond, after unsuccessfully attempting to secure the aid and assistance of the Attorney General.

The suit alleged that the aforementioned annexation diluted the vote of the plaintiff class, that the dilution was intentional and purposeful, and was in violation of the Fourteenth and Fifteenth Amendments to the Constitution of the United States. No question of the Voting Rights Act was raised.

On May 7th, the United States Attorney General objected to the annexation, approval for which had been requested by the City on June 28, 1971, and which application had been objected to by Holt and the Crusade. No further formal action was taken by the



Crusade or the Government until their appearance in the instant cause.

On June 1, 1971, Answers to the Complaint were filed and, over the objection of the plaintiff, the preliminary hearing was consolidated with the hearing on the trial on the merits set for September 20, 1971.

Trial on the merits was begun on September 20, 1971, and concluded on September 24, 1971. On September 28th findings of fact were announced from the bench. At the conclusion thereof, the defendants moved orally for the taking of additional evidence. Over the objection of the plaintiff on October 12, 1971, the District Court granted said motion and set October 19 and 20, 1971 for the taking of additional evidence on the question of the practicality of de-annexation and other remedies after announcing that the plaintiff class was entitled to relief.

Plans were filed by defendants for remedies other than de-annexation, and argued at the October 19th and 20th hearing.

On November 20, 1971, the District Court filed a Memorandum of its findings of fact and conclusion of law. On November 23, 1971, the Court entered its Order. A stay of the Order was granted by the Fourth Circuit Court of Appeals on December 8, 1971. A Petition to Vacate the Stay was filed by Holt with the United States Supreme Court on December 9, 1971, which Petition was subsequently denied.

Also on December 9, 1971, Holt filed an action in the District Court for the Eastern District of Virginia, pursuant to Section 5 of the Voting Rights Act, seeking a judgment that the annexation was without effect for lack of prior approval by the Attorney General or the

United States District Court for the District of Columbia. This cause, often referred to by the litigants as Holt II, was filed before a statutory three-judge court. This cause was stayed, pending appeal of the first Holt suit.

On March 15, 1972, Holt filed for an injunction in Holt II against the City to prevent an election for City Council scheduled for May 2, 1972.

On April 4, 1972, the Holt II court denied the injunction. Holt immediately filed an application to enjoin the elections before the United States Supreme Court and on April 24, 1972, Chief Justice Burger, with Justices Blackmun and Rhenquist concurring, wrote the opinion of the Court granting Holt's application for injunction.

On May 3, 1972, the Fourth Circuit reversed the District Court on the grounds that motive and purpose of legislative bodies could not be examined under a pure Fifteenth Amendment claim, and expressed knowledge of the Holt II case, saying that their opinion in no way applied to the issues surrounding the claim under the Voting Rights Act.

On May 4, 1972, Holt filed a Motion for Summary Judgment in Holt II.

On August 25, 1972, the instant action was filed by the city, five days prior to the scheduled hearing on Summary Judgment in Holt II.

On October 11th, Holt again appeared in Holt II to enjoin elections for constitutional officers and all future elections which Order was granted that day.

A decision to stay proceedings in Holt II was entered February 14, 1973. This decision kept the Summary



Judgment under advisement pending final decision in the instant cause.

The instant case was referred to a special master who took evidence by stipulation of the record in Holt I and the original annexation trial and held a hearing for additional evidence on October 15, 16, and 17, 1973. The master filed his opinion January 21, 1974, in which he recommended deannexation. (See J.S. City, Appendix C)

## V

## THE DECISION BELOW

The District Court, after reviewing the special master's findings, concluded, "far from being 'clearly erroneous,' [the finding] was *compelled* by the record before the Master" that the annexation plan as amended has the purpose and effect of diluting the black vote in Richmond. (J.S. App. B, p. 3b)

The Court stated that since the original annexation was racially motivated, the City would have to demonstrate "by substantial evidence (1) that a ward plan not only reduced, but effectively eliminated the dilution of black voting power caused by the annexation[46], and (2) that the City has some objectively verifiable, legitimate purpose for annexation." [Footnote 46 read: "The *Petersburg* court was fully aware that the 'calculated to neutralize to the extent possible' standard which it established for annexations not motivated by a discriminatory purpose requires a city to minimize but not necessarily to

remove entirely any dilution of black voting power caused by the annexation." (J.S. App. B, 20b])

The Court found that the City failed to meet its burden but that "it appears that the white political leadership presently in control of Richmond *adopted the ward system* for the purpose of doing what they could to maintain the dilution of the black vote produced by annexation." (J.S. App. B, 27b)

The Court further noted that "[b]ecause of our understanding of the political importance of obtaining a majority on the City Council, we have not included in our analysis the effect . . . on the election of the City's five 'constitutional officers': Commonwealth's attorney, city treasurer, commissioner of revenue, sheriff and clerk of court. These officers . . . are of necessity elected on an at-large basis. Thus with respect to these officers, the ward system does nothing to counteract the dilution of the black vote caused by annexation." (J.S. App. B, fn. 61 p. 26b-27b)

The Court also noted that "blacks would have a greater opportunity to elect five councilmen [ a majority] responsive to their concerns and interest in an at-large system within Richmond's old boundaries then in a ward system operating within the expanded boundaries." (J.S. App. B, p. 26b)

The Court thus denied the City's request for declaratory judgment, but stopped short of affirmative relief. The Court correctly noted its inherent power to do so (J.S. App. B, p. 34b), and commented on Holt's request to enjoin Richmond to de-annex and hold immediate elections, saying "there are strong equities in favor of such an injunction." (J.S. App. B, p. 30b)



## VI.

## SUMMARY OF ARGUMENT

The City's arguments have as their central core or underlying assumption that this annexation serves an objectively verifiable, legitimate purpose. The Government's arguments include this assumption, but also maintain that this issue was not directly litigated below. Therefore, the arguments will address these issues first. There is simply no factual basis to say that the economic issue was not directly litigated. Over 7,000 pages of testimony are in the record on the economics of the original annexation; four days of testimony dealt directly with this annexation compromise; and further evidence and testimony was taken by the Master. The master and court had before it approximately 8,500 pages of testimony and hundreds of exhibits.

This case arises under Section 5 of the Voting Rights Act of 1965, which section requires the City to establish that its 1970 annexation and subsequent proposed modification of the at-large system of municipal elections to single member districts does not have the purpose or effect of denying or abridging the right to vote on account of race or color.

The City proceeded with the annexation without approval of the Attorney General or the District Court for the District of Columbia. The annexation was accomplished for the purpose of diluting the vote of black citizens in the City.

Cities may have legitimate economic reasons to expand their boundaries into areas which coincidentally

contain many more white than black citizens. Where the city can show it was not motivated by a desire to dilute and that its desire to expand was legitimate, a ward plan calculated to minimize any resultant dilution could save that annexation from illegality under Section 5.

Thus, the City would have to show some objectively verifiable, legitimate purpose for the annexation to justify allowing the City to retain it. After meeting that burden, the City would still have to then demonstrate a voting plan which neutralized to the extent possible the resultant dilution as it affected municipal elections.

If the City failed to meet this burden, then the annexation would have to be prohibited.

The effect of this ruling would not in any way limit or make more difficult annexations by cities in the future.

As Judge Butzner so cogently noted in *Holt v. City of Richmond*, 459 F.2d 1093, 1108:

> Divestiture [de-annexation] is not intended to freeze the racial composition of Richmond's population. This composition will change freely as white and black people move in and out of the city. Moreover, *the relief I would grant is not designed to deny Richmond, or any other city, the right to expand its boundaries through annexation, or otherwise, even though such expansion may adversely affect the voting power of one race or another.* Annexation is a legitimate means of improving the economy of a city and the quality of its environment. The Constitution, I believe, does not forbid a city to expand its boundaries, even though enlargement may have the collateral effect of modifying its racial composition. *The remedy I suggest [de-annexation/divestiture] is*



> *intended to prevent city officials, black or white, from deliberately and intentionally employing annexation laws to dilute the voting rights of any race.* [emphasis supplied]

Here the City failed both its first burden of showing despite its intentionally dilutive purpose, that this annexation had any objectively verifiable, legitimate purpose, and its second burden of showing that the proposed modification neutralized to the extent possible any impermissible effect and further even failed to show that the proposed ward plan was not itself racially motivated to maintain white control.

The annexation actually left the City in a worse position economically and for future growth; and its ward plan further diluted the black voting potential, creating a greater polarization of the races than did the initial dilution.

## VII.

## ARGUMENT

### A. The Economic and Administrative Benefits/ Losses of the Annexation

#### a. Are Economics and Benefits Relevant to this Case?

The City argues in their second assignment of error that this case concerns not an abridgement or denial of constitutional rights by the change in black voting strength, but that the change was merely "incidental to achieving different, legitimate governmental goals attain-

able only through annexation." The City then characterizes this as a "legitimate annexation." (Brief for appellant, pp. 34, 35)

If such a legal position is maintainable, then the crux of that issue perforce must be the factual determination of whether the instant annexation was "legitimate." That is, did the City have "some objectively verifiable, legitimate purpose for annexation" (J.S. App. B, p. 20) as required by the District Court below or as put by the Court in *City of Petersburg v. United States*, 354 F.Supp. 1021, 1024, was "the annexation as carried out . . . fairly intended to accomplish a legitimate governmental purpose"?

Thus, the City cannot be heard to complain of error when the District Court below explored the very factual question which, if determined in their favor, could support their contentions. Yet complain they do in Argument V (App. Br., 51) that findings that the City "failed to establish any counter-balancing economic or administrative benefits of annexation" were "irrelevant." In support of that contention, the City states as a proposition that "this is a question of constitutional rights, upon which economic and administrative issues have no bearing. *Watson v. Memphis*, 373 U.S. 526, 537-38." (App. Br., p. 52)

The *Watson* case if relevant to this action is supportive of appellees Holt, et al., and does not stand for the above proposition in any respect. *Watson* dealt with the desegregation of recreational facilities in Memphis. Memphis attempted to delay court-ordered desegregation on the ground of economic hardship. Reversing the court below, Mr. Justice Goldberg, speaking for the Court noted:



> Vindication of conceded constitutional rights cannot be made dependent upon any theory that it is less expensive to deny than to afford them . . . the city has completely failed to demonstrate any compelling or convincing reason requiring further delay . . . (pp. 537-539)

In furtherance of this incorrect argument, the city creates yet another non-existent legal theory that the "Attorney General is given status equal to that of the Courts to pass upon voting changes under Section 5." (App. B, p. 53) As clearly stated by this Court in *Allen v. State Board of Elections*, 393 U.S. 544:

> The Attorney General does not act as a court in approving or disapproving . . . (p. 549)

Nevertheless, the Solicitor General agrees "with the district court that in order to establish that the city 'has purged itself of a discriminatory purpose in an annexation of new voters, it [must demonstrate] by substantial evidence . . . that [it] has some objectively verifiable, legitimate purpose for annexation." (J.S. App. B, p. 20b)

**b. Was the Economic Benefit Issue Directly Litigated Below? Did the City Prove Any Objectively Verifiable, Legitimate Reasons for the Annexation? Did Defendant-Intervenors Have a Full Opportunity to Rebut Such Evidence?**

The answer to these questions, respectively is, yes, it was extensively litigated; no, the City did not prove legitimate reasons for the annexation; and, yes, not only did defendant-intervenors have a full opportunity

to rebut, but in fact fully established that there was absolutely *no* objectively verifiable, legitimate purpose for the annexation.

*1. Was the issue of objectively verifiable purpose directly litigated?*

The Government would have this Court believe that this issue was glossed over, not developed and that the Master and court below relied "solely" upon biased testimony from one witness. Such is simply not the case. The record before the Master and the court below ran in excess of 10,000 pages with hundreds of exhibits. At least 7,000 pages dealt directly with the economic and administrative benefits which could have been expected from the original area sought. Four days of testimony were taken in relation to the benefits or lack of them to be derived from the compromised annexation area, in addition to the testimony taken directly before the Master. Interrogatories and the answers thereto were before the Master and court below.

This evidence was stipulated into the record by the parties specifically for the purpose of having it before the court without the necessity of recalling all those witnesses again and creating a prohibitively protracted and expensive trial. The Master's hearing was held to update that evidence if possible and to add to it evidence as to remedy. Thus, the Master's hearing was no more than a hearing taken to complete the voluminous record already developed. Since 1971, the Holt Intervenors had been attacking this annexation with witnesses, evidence and by discovery on the very



issue that there was no objectively verifiable, legitimate purpose.

If the City concentrated on the ward plans during the Master's hearing, it was because all that could be said on the "legitimacy" of this annexation had been said and was already in the record.

The City had ample opportunity to come forward with any additional evidence which it could muster to establish the existence of non-discriminatory purpose (if any) justifying retention of the annexed area. The City failed to do so simply because it is impossible to do so.

The best example and corroboration of this fact is the method used by the City in reference to the Urban Institute Report, "The Impact of Annexation on City Finances".

This report was known to the City almost a year before the Master's hearing. The City had been subjected to extensive and damaging discovery on this issue in the instant case by the Holt Intervenors. The City knew the Holt Intervenors would again call Mr. Burnett as an expert on this very issue. (See witness list for Holt Intervenors) The City had the authors of the report on hand waiting to be called at the hearing if they were to introduce the report. Yet the City chose not to call the authors or introduce the report in support of their case or in rebuttal. Nor did they introduce any other rebuttal evidence to Burnett's testimony and the evidence in the record, even though all the high ranking, budget, finance, administrative heads and planners for the City were present. Subsequently, in argument to the three judges, the City quite improperly referred to the contents of the report. In printing the appendix to this Court, the City sought

again to bring in the report and reluctantly withdrew it under pressure. Yet in their brief, they selectively quote, most improperly, from the report.

Why would the City track such a patently improper evidentiary course? Because the report could never have withstood the glare of cross-examination, and, in fact, when the supportive facts underlying the report's conclusions are examined, the raw data destroys any lingering doubts which may exist that this annexation could possibly have any legitimate purposes. Further, both the Master and the court below did review the Urban Institute Report and concluded the report "could not in any case remove the doubts . . . " (J.S. App. B, p. 22b fn. 41)

### *2. Did the Annexation Have an Objectively Verifiable Legitimate Purpose?*

Without reference to the plethora of evidence as to the discriminatory purposes already established, standing alone, this annexation utterly fails to serve any legitimate governmental purpose and, in fact, leaves the City in a position substantially worse than it was before the annexation.

There are two basic reasons why a city feels the need to expand: (a) need for vacant land for expansion, and (b) fiscal need for an improved economic base. A study of all the testimony and exhibits before the Master and court below and considered by them (J.S. App. B, p. 22b) compels the finding "that the City failed to establish any counterbalancing economic or administrative benefits of annexation." (J.S. App. B, p. 20b)



#### (a) The Question of Vacant Land

In determining whether this annexation satisfied the city's need for vacant land, it is necessary to examine what the City felt it needed, what it had, and what it actually received from this annexation.

Chief counsel for the City in the annexation trial, Horace Edwards, (himself a former Richmond City Manager and Councilman) summarized the City's position to the annexation Court:

> . . . during that period [1950-1960] the City gained almost 20,000 – 19,800 – in Negro population, but it lost 29,000 nearly 30,000 in its white population . . .
>
> The evidence will show that following the annexation of 1942 . . . Richmond was given an increase in its vacant land to 30 percent . . .
>
> . . . while this case has been pending in this court, the population in this area that we are seeking has increased 31,000 people [up from 42,000].
>
> The evidence will show . . . that any restriction whatever of the 51 square miles due to this unprecedented growth . . . will fall way short of meeting the needs for land and for development and growth in the City of Richmond in the reasonably near future, which according to those who are knowledgeable in the field is about 20 years. (ATR, Vol. 2, pp. 10, 11, 12)[1]

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[1] While counsel's comments are not evidence in the case in which they are made, they are significant here due to the technical background of this counsel and the fact that Mr. Edwards fought against the annexation settlement on the very grounds that it would not improve the City and would be economically adverse to the city's needs.

The City had to have all 51 square miles or it would not have sufficient vacant land to grow, attract industry, etc., etc.

The City has maintained that it could have taken a 1963 annexation award if its purpose was dilution. The evidence has shown that the City Charter did not allow bond sales for the purpose of paying for annexations at that time. But, nevertheless, assuming *arguendo* the City turned the Henrico award down on other grounds, the fact remains that a comparison of what the City would have received in the Henrico award with what it received in this annexation is very revealing. Especially is this so in light of the 30% vacant land goal expressed above.

Again, quoting Mr. Edwards:

> . . . In that case [Henrico] Council turned down the award that was given, the evidence will show, because the land awarded only increased the availability of vacant land in the City [by] 3.3 percent. . . . The evidence will show, it [vacant land] is down to 12.4 percent. This is gross land.
>
> The evidence will show that when you take out land, because of topography, of flood plains . . . the only thing that is left in the City now is *6.6 percent of vacant land*, which is seldom found in any city the size of Richmond anywhere in the land. (ATR Vol 2, p. 6)

Thus, prior to this annextion the City had 6.6 percent vacant useable land or 2.633 square miles (see App. B, p. 6) out of 39.89 square miles. The uncontroverted testimony is that in the annexed area, there exists 6.25 percent vacant useable land, (J.A. p. 527) or 1.475 square miles out of 23 square miles.



Thus, after annexation the City had 4.108 square miles of vacant, useable land, out of 62.89 square miles in the expanded City or only *6.53%* vacant, useable land, AN ACTUAL DECREASE from the 6.6% vacant land prior to the annexation.

The Henrico award was rejected because it only netted a 3.3% *increase*; this annexation was sought and accepted over the objection of the City's own lawyers despite the fact it resulted in a DECREASE of available vacant land, which itself was roughly 500% less than the 30% vacant land the City needed.

| | Sq. Mi. | Useable Vacant Land (Edwards)* | Useable Vacant Land (City's Exhibit)** |
|---|---|---|---|
| Old City | 39.89 | 2.633 sq. mi. 6.6% | 2.553 sq. mi. 6.4% |
| Annexed Area | 23.00 | 1.475 sq. mi. 6.25% | 1.475 sq. mi. 6.25% |
| Expanded City | 62.89 | 4.108 sq. mi. 6.53% | 4.028 sq. mi. 6.41% |

*Edwards' estimate ATR Vol. 2 p. 6

**City's exhibit ACX, A-2 "Net Vacant Land"

Note: The City's exhibit was included because the net affect would show a net increase to the City of 00.01% after annexation as opposed to a net decrease of 00.08% using the Edwards' estimate.

**(b) The Question of Fiscal Impact**

The City maintains that "the evidence relied upon by the Master and by the District Court cannot pass muster when stacked against the direct testimony of the City Manager [Kiepper]" (App. B, p. 58) and then suggests Kiepper's testimony to be "that the operations

in the annexed area result in an economic benefit to the City." (App. Br., p. 58)

Such is a knowing misstatement of the evidence, for when questioned directly on this point, the City Manager testified:

> Q. Are you making money off the annexed area now? Does it show a profit?
>
> A. No, sir.
>
> Q. You are losing money off it?
>
> A. Yes, Sir. (HTR, Oct. 19, 1971, p. 130)

The City, as does the Government, attempts to have this Court believe the Master and the court below relied solely upon Burnett's testimony at the Master's hearing. While such is simply not true (as evidenced above and by the fact that both the Court and the Master specifically note they considered all the *Holt* evidence as well as the Urban Institute Study [App. B, p. 56]) the fact remains that most fiscal references in the findings below refer to Burnett's testimony.

The obvious reason is that Burnett was substantially more generous to the City than the evidence previously introduced, or either the City Manager or Urban Institute's figures.

Mr. Burnett's use of per capita estimates, actually are born out by the City's fiscal experts and by the Urban Institute, as will be discussed below.

Obviously, the only way to study fiscal impact is to compare revenues and expenditures directly relating to the annexed area.



***(i) Expenditures***

In discussing expenditures, a distinction must be made between general operating budget expenditures and the capital budget expenditures.

The City quite properly observes that capital outlay is not a cost of government, only the debt service. (App. B, p. 57) This is an obvious reference to Mr. Burnett's testimony relating to expenditures for capital improvements in the area. Mr. Burnett estimated an annual cost of 3 million dollars. The City misread this testimony to mean capital outlay not debt service. However, the Urban Institute estimated this annual debt service expenditure to be approximately 2.9 million dollars (tables 23 and 25, pp. 47 and 51 Urban Institute Report). Mr. Burnett and the Urban Institute are thus in agreement as to this figure. The City expends 2.9 million dollars a year of capital expenditures.

The most accurate estimates of general operating expenditures per year are supplied by the City's own fiscal experts upon directed interrogatories.

The City is on a fiscal year from June 1 through May 31st. However, the City has controlled the annexed area since 1 January 1970. Thus, the following chart shows expenditures relating to the annexed area on a calendar as well as a fiscal basis.

General Fund Expenditures – Annexed Area*
Jan. 1, 1970 - March 19, 1973

| Period of Time | Expenditure |
|---|---|
| Calendar 1970 | 23,927,499.38 |
| Calendar 1971 | 20,196,359.34 |
| Calendar 1972 | 28,398,373.30 |
| Calendar 1973 | Unavailable |
| Calendar 1974 | Unavailable |
| Fiscal 1971-72 | 24,273,868.12 |
| Fiscal 1972-73 | 23,274,775.74 |
| Fiscal 1973-74 | Unavailable |
| Average Calendar | 24,174,077.34 |
| Average Fiscal | 23,774,321.93 |

*Source - Answers to Interrogatories of Holt Intervenors to City of Richmond filed by Robert Fary, Director of Finance, City of Richmond, 21 May 1973.

Thus, the approximate annual operating expenditure ranges between 24.2 and 23.8 million dollars a year in the annexed area.

The total annual expenditure in the City of Richmond in the annexed area is 26.7 million dollars.

Annual Expenditures – Annexed Area

| Operating Expenditures* | Capital Expenditures** | Total |
|---|---|---|
| 23.8 million (a) | 2.9 million (b) | 26.7 million |

*average
**debt service, not capital outlay
(a) The lower average based on fiscal year; source: Richmond Director of Finance
(b) Source: Urban Institute, Melvin Burnett



*(ii) Revenues*

Again the City complains of Mr. Burnett's estimates relative to this issue. Burnett estimated revenue from real estate taxes was approximately 6.8 to 7 million dollars annually. (J.A. p. 528) The Urban Institute estimated revenues from real estate to be approximately $7,093,000.00 or 7.1 million dollars annually. (Urban Institute Study, Table 5, p. 18)

From this point on, Mr. Burnett is much more generous with his revenue estimates than either the Urban Institute or the City Manager.

The following table illustrates the comparative estimates on revenue.

Annual Revenues – Annexed Area

| | Real Estate | Misc.* | Total |
|---|---|---|---|
| Burnett | 7 million | 14 million | 21 million(a) |
| Urban Inst. | 7.1 million(b) | 9 million(c) | 16.1 million(d) |
| City Manager | unknown | unknown | 14.5 million(e) |

*Misc. includes – licenses, utility, sales tax, personal property, machinery and tools, fines, forfeitures and delinquent taxes
(a) J.A., p. 528
(b) Urban Institute Study, Table 5, p. 18
(c) Urban Institute Study, Table 8, p. 22
(d) Same as (c)
(e) Keipper's highest estimate fiscal 71-72, (J.A. p. 388)

From the above chart, it is or should be apparent that the City should be happy with Mr. Burnett's testimony as he credits the area with producing 4.9 million dollars more per year than the Urban Institute and 6.5 million dollars more per year than the City Manager.

*(iii) Net Loss or Gain*

Obviously, by anyone's estimates the annexation has a decidedly adverse fiscal impact upon the City of Richmond. Inasmuch as costs inflate faster than taxes, this disparity will continue into the foreseeable future.

The comparison of impact is shown in the chart below:

Fiscal Impact – Annexation Area
Annual Deficit

| Estimate | Total Expenditures* | Total Revenues | Annual Deficit/Loss |
|---|---|---|---|
| Burnett | 26.7 million | 21 million | (5.7 million) |
| Urban Inst. | 26.7 million | 16.1 million | (10.6 million) |
| City Manager | 26.7 million | 14.5 million | (12.2 million) |
| | Average annual loss: | | ( 9.5 million) |

*Source: Robert Fary, Director of Finance, City of Richmond, *supra.*

Thus, the City of Richmond has an annual fiscal loss of 9.5 million dollars a year in the annexed area.

Surely, in face of the enormous fiscal loss of 9.5 million dollars a year and the net decrease in available vacant land, the Master and District Court below were compelled to find that not only did the City fail to demonstrate any objectively verifiable, legitimate reason for this annexation, but the City could never show any justification for retaining the area.

The entire struggle by the City has been from the onset to retain the territory. If the territory is a fiscal and administrative loss to the City, then the desire to keep it must be based upon some other value that the territory has. There is no other value to the City, but



there is another value to the white power structure currently in control: that obvious value is that the territory contains in excess of 50,000 white citizens, who keep the black citizens in a substantial racial minority.

**B. De-Annexation is an Effective And Reasonable Remedy**

Obviously, in the abstract, if dilution exists, the most effective remedy is to remove the cause of the dilution. Especially is this so when the cause itself is an administrative and economic burden upon the citizens who have been diluted, as well as those who benefit from the dilution.

Outside the single issue of reasonableness, no party disputes that de-annexation is the most effective means of curing the dilution. (H. Tr. 190, 506, 507, 618) De-annexation also is the most efficient means of curing the impermissible purpose of the annexation itself. See *Gomillion v. Lightfoot*, 364 U.S. 339 and Dissent, Judge Butzner, *Holt v. City of Richmond*, 459 F.2d 1093.

Where a boundary expansion (devoid of benefit) was initiated and carried out as a purposeful device of racial disenfranchisement, any measure of relief which rewards the invidious purpose is by definition ineffective.

Contraction of the impermissibly expanded boundaries to their prior limits leaves no reward to the racially motivated expanders.

The City would urge that polarization and bloc voting would be aggravated by return to the at-large system and not even one representative could be

elected. In 1970 without the annexation, four black representatives would have been elected; three were actually elected. The ward plan would pit black ward against white ward. Representatives elected in each ward would be responsive to the needs of that ward only, which would guaranty a polarization of race without limit. With a return to at-large elections, the sizeable black vote would be a political force with which all officials would have to reckon and perforce cause them to be more responsive to the needs of all the races.

Contraction of the City boundaries to pre-annexation limits is not a voyage upon unchartered seas. It is a familiar concept to the parties in general and to Chesterfield County and Richmond in particular. Chesterfield has undergone several boundary contractions, i.e., de-annexations, in recent years, the latest involving the same territory which is the subject matter of this dispute. (MTR 675) The County Administrator (for 25 years) qualified as an expert both in local government (MTR 673, *et seq.*) and in the mechanics of boundary contraction. (MTR 675, 679, 680) His testimony went unrebutted and uncontradicted.

To be reasonable, boundary contraction must lend itself to speedy determination of the financial equities, administrative methodology of transfer and nonburdensome workable resolution of disputes which could arise. It took two weeks for the parties to determine the financial equities in the original City expansion-County contraction. (MTR 687) It would take no longer than thirty days to again determine the financial equities administrative methodology of transfer and effectuate full transfer of governmental services. (MTR 683, 684, 687) The State annexation court remains in session under state law to act as arbiter for the resolution of any issues which would arise from the annexation, and is, therefore, a proper arbiter for resolution of any issues arising out of the boundary contraction. Being existent, local, operative machinery, its utilization would be nonburdensome.



To be reasonable, there must be no disruption of governmental services, requiring, therefore, a corresponding ability of the County to assume these services financially and administratively. Chesterfield County has 18 million dollars in the bank, pursuant to a recent sewer bond sale, 10 to 12 million dollars due from the State Water Control Board, 4 to 5 million dollars in the water fund, 1 million dollars of authorized school bond issue, and a normal bank balance of 20 million dollars at all times. (MTR 688, 689) All Chesterfield capital outlays with the exception of schools and utilities are paid from current revenue. (MTR 689) Bonds issued by the City for capital outlays could be assumed by the County. (MTR 689) The City has spent only 7 million dollars in capital outlays in 2½ years. (MTR 695) The County possesses sufficient financial ability to reassume control. Administratively, the County is amply prepared to assume all services: the county school system is innovative, advanced and capable of reabsorbing the children (MTR 682); the County would have no problem utilizing the City constructed fire stations, and has just expanded its fire department in personnel and equipment. (MTR 682) The City uses a different hose connection thread than the rest of the County, but converters could be carried on trucks until the threads were replaced. (MTR 686-87) The County Police

Department has a waiting list and sufficient manpower with initial overtime scheduling to provide protection during its expansion. (MTR 683) The garbage and trash collection is handled now by the same private contractor previously contracted by the County and would continue after transfer. (MTR 684) The County has a better water supply than the City and could use almost every waterline installed by the City. (MTR 685-86) The County can use every foot of sewer line installed by the City; most of the sewer lines installed by the City were on County developed plans. (MTR 686) The records of utilities, assessments, taxes, etc. of the area are computerized and can easily meld from the City to the County computer, while continuing normal governmental functions. (MTR 685) The County has doubled the size of its jail, increased the mental health program and would experience no difficulty in the administration of jails, courts, probation, mental health, welfare or social services in the event of transfer. (MTR 691) Chesterfield County is willing to reassume governmental control over the subject area. (MTR 697, HHX 37, MHX 2)

To be reasonable, there must be no substantial economic deprivation to the City and no corresponding unjust enrichment to the County. The County does not expect to be enriched by an order of de-annexation. (MTR 682) The City has spent only 7 million dollars in the annexed area to date, with 21.3 million dollars which must be spent within the next 2½ years (MTR 695) and has an *annual average net* financial loss of 9.5 million dollars. The return of the area would thus save the City at least 9.5 million dollars per year of operating loss, 21.3 million dollars of required capital



outlay, and would realize bond assumptions and cash reimbursements in excess of 7 million dollars. In light of the inconsequential growth potential of the area (6.503%), the City would economically benefit by a return of the area to the County.

In the context of the Voting Rights Act, the black Vice Mayor of the City of Richmond and member of the Crusade had these observations when questioned by the court about the problems of de-annexation:

> . . . I think that these inconveniences and these other things [losing land, tax, schools] should not be permitted to overcome the Voting Rights under the Constitution . . . I think that *having a territory in the city would not help the city that much,* if the priorities of the city are not based properly in satisfying the substance of the Voting Rights Act.
>
> I think that *having extra territory* with the priorities fixed as they were in the past, *would not be in the interest of the black person.* [emphasis supplied] (MTR 619-20)

Contraction of the City boundaries, i.e., de-annexation, is a reasonable remedy and a remedy which will effectively cure the dilution and furthermore cure the impermissible racial motive of the boundary expansion.

### C. The City's Ward Plan and Ward Plans in General Are Ineffective As a Remedy in the Context of a Purposeful Dilution By An Illegitimate Annexation

#### 1. The Population Percentage Shell Game

The City plays a shell game with the unrestrained interchange of total population percentages with

voting-age percentages. The City uses voting-age percentages without reference to the percentages of blacks just below and soon to be translated into voting-age nor adjusted for frequency as percentages of blacks who vote compared with whites. Then the City blithely returns to total population percentages in characterizing its wards as white or black.

As the Court noted:

> The fact that the percentage of Richmond blacks of voting age is appreciably less than the percentage of blacks in the total population of course means that there are proportionately more black youngsters. We, *like the white political leadership of Richmond,* can anticipate that the present black population majority within Richmond's old boundaries will translate in a few years into a voting age majority. In an at-large system, such a majority would ensure that none of the nine City Council seats was occupied by a candidate who appealed only to a white voting bloc, ignoring the needs and aspirations of Richmond's black citizens.

**2. Access to the political process, not population, is the barometer of dilution.**

In any event, a resort to mathematical comparisons of registered voters, voting age population, a total population, while relevant in redistricting cases, is not relevant here.

We are concerned "with the reality of changed practices as they affect Negro voters." *Georgia v. U.S.*, 411 U.S. 526, 531.



The court below put it most succinctly when it stated: "We must look beyond percentages, whether they be of total populations or of voting-age populations, to determine the effect of the boundary expansion on the voting power of blacks and their access to the political process. As the Fifth Circuit has recently stated:

> ***Inherent in the concept of fair representation are two propositions: first that in apportionment schemes, one man's vote should equal another man's vote as nearly as practicable; and second, that assuming substantial equality, the scheme must not operate to minimize or cancel out the voting strength of racial elements of the voting population. Both the Supreme Court and this Court have long differentiated between these two propositions, and although population is the proper measure of equality in apportionment, in *Whitcomb v. Chavis,* 403 U.S. 124, 149-50, 91 S.Ct. 1858, 29 L.Ed.2d 363 (1971) and *White v. Register, supra.*, 412 U.S. at 765, 93 S.Ct. at 2339, 37 L.Ed.2d at 324, the Supreme Court announced that access to the political process and not population was the barometer of dilution of minority voting strength . . ."

(J.S. App. B, p. 25b, see also *Zimmer v. McKeithen,* 485 F.2d at 1303 and *Beer v. U.S.*, 374 F.Supp. at 384)

**3. Ward plans are a wholly inadequate remedy.**

The interesting point is that the entire discussion of the ward system has as its basis an improper assumption. That is that the area should remain

annexed, that given the assumption the area is worth keeping, than "whole-hearted good faith attempt[s] to neutralize dilution" (Appellants brief, p. 47) should suffice.

It is as if a company had to be taken over forcibly and one of the bandits were later heard to say to the court "I should be able to keep the company if I make a 'wholehearted good faith attempt' to pay good dividends to the stockholders."

The *Petersburg* case did not stand for this proposition. There, in the context of a legitimate annexation, the most reasonable remedy was a ward plan. Here, in the context of an illegitimate annexation and purposeful dilution, the most reasonable remedy is not concerned with retaining the territory.

In any event, an examination of the ward plan finds it wholly lacking even as to the purposes the City would ascribe to it.

The City's Ward Plan does not cure any of the dilutive effects of the annexation (much less the question of impermissible purpose), but rather focuses that dilution in the "swing" ward, Ward H, (the four black and four white wards allegedly cancelling each other out.) (MTR 613)

Thus, the fight for political control centers in Ward H. The racial percentages in Ward H on a general population basis are 59.1% white and 40.9% black. (MTR 615, MCX 15-19) Prior to annexation, the percentages were 52% black and 48% white. After annexation, the black percentage was diluted by 10 percentage points to 42% black. The City Ward Plan thus dilutes even more than the annexation itself. (MTR 616) The net effect then under the City's Ward Plan is



to reflect even greater dilution than that caused by the annexation itself. The use of voting-age population figures is an obvious attempt to change the pre-annexation demography of the City from that of 52% black to 44.8% black. This approach is fallacious on three grounds.

First, "voting-age population" ignores the fact that the Voting Rights Act and the case law deals with *voting potential, Georgia v. U.S.*, 93 S.Ct. 702. To ignore the under 18 population is to exclude all data relevant to voting potential.

Secondly, the objectors refer to "voting age population" ONLY when speaking of the total City population, then blithely return to straight population figures when comparing wards and their racial composition or when seeking to identify which wards and how many will elect black representatives.

Third, the "voting-age population" approach totally ignores other relevant data such as the percentages of each race which generally vote in elections, future growth potential, death rates, etc.

The City's Ward Plan is also unreasonable in that it is designed as a temporary remedy until such time as Section 5 of the Voting Rights Act expires. A referendum under the diluted at-large system would later be held in order to allow the abandonment of the ward system. (MTR 184, MHX 1, J.A. p. 180)

It must also be recalled that the Master had before him Mayor Bliley's admission that he had, in effect, proposed the easy and early circumvention of the ward plan (which the plaintiff claims it is so eager to adopt) by an *at-large* referendum as soon as Section 5 of the Voting Rights Act expires. The Master could hardly be

expected to approve the "solution" of a ward plan when one of the plaintiff's chief spokesmen has indicated that it can be discarded like so much rubbish once Section 5 expires. Not only did the Mayor's suggestion illuminate the ineffectiveness of the ward plan remedy, it also laid bare the continuing racial motivation of the plaintiff in seeking approval of this annexation.

**4. The Ward Plan is not a correct, fairly-drawn plan.**

The record amply demonstrates that the City's own Ward Plan (MCX 15, J.A. 121) does great violence to its self chosen criteria of boundaries, neighborhoods, etc. (MTR 144, 150, 158, 159, 174-177, 492, 496-97, 505)

The City Plan reflects no political considerations. (MTR 433) The communities of interest are defined by the City as being concerns with facilities and services (MTR 429) or that needs-services is another way of saying income, black areas, racial. (MTR 433) To draw voter districts, these needs-services would be the issues motivating voters and yet the City has not drawn its wards with these considerations in mind. (MTR 483, 485, 489, 490)

Furthermore, the architect of the plan had no racial data to work from. (fn. 8, Appellant Brief, p. 48) If his purpose was to cure dilution and make access to the political process meaningful, he would have had to have that information to make any significant attempt.

In the context of past discrimination and the invidious racial motivation, ward plans do not even



address the question of how to cure the impermissible purpose. Nowhere in the record is there any explanation or supportive evidence to show how purpose is cured or even affected. The ward plans leave unresolved the dilution itself without reaching the impermissible motive.

In that by their own terms the ward plans leave unchanged the dilution in any substantial degree or merely make that dilution worse, they are ineffective. In that they do not reflect logical and generally acceptable criteria, they are unreasonable. In that they leave untouched the question of motive/purpose, they are both ineffective and unreasonable.

The Court in *Beer II, supra.* put it well when it stated:

> In determining the impact of a redistricting plan upon the voting capability of a racial minority, the relevant comparison is between the results which the minority is free to command and the results which the plan leaves the minority able to achieve. A substantial difference between the two, not justified by a compelling governmental interest is unconstitutionally enervating. (*Beer, supra.* at 388)

Even the appellant tacitly admits that its ward plan would leave the black voters a *maximum* of *four* (4) of the city of Richmond's *nine* (9) councilmanic seats. While it is true that prior to the illegal institution of the covert, compromised annexation by appellant, blacks constituted only 44% of the voting age as shown by a 1970 census, the percentage of blacks in the total population was *greater* than the percentage of whites in the total population and would (as the court found), if indeed it has not already done so, in a few years

translate itself into a voting-age majority. (J.S. App. B, 23b-24b) Further, appellant's ward system *guarantees* a white-controlled City Council while there "... is good reason to think that blacks would have a *greater* opportunity to elect five councilmen responsive to their concerns and interests in an at-large system within Richmond's old boundaries than in a ward system operated within the [illegally] expanded boundaries." (J.S. App. B, 25b-26b)

While it is true that wards do guaranty seats on council, more importantly, *wards guaranty a limit* to the number of black seats on council and severely limit the *potential* growth of black voting influence on council.

The purpose of the act was to prevent disenfranchisement, not crystalize and establish an arbitrary status quo. Richmond blacks were well on their way to ever increasing representation. This annexation was sought to prevent and delay that growth. Ward plans are only a slightly less effective delay and as such are themselves merely a second line defense of white supremacy and a first line defense of personally motivated black political bosses who would insulate themselves in pocket boroughs.

### D. The Question of Purpose Was Not Settled in the Appeal of Holt I

The City asserts that the question of its purpose in annexing twenty-three (23) square miles of Chesterfield County and its overwhelmingly white population has been settled in its favor in *Holt v. City of Richmond, et*



*al.*, 459 F.2d 1093 (4th Cir. 1972), *cert. denied*, 408 U.S. 931 (hereinafter referred to as "Holt I Appeal"). The City goes on to claim that the majority opinion in *Holt I Appeal* collaterally estopped the Court below from inquiring into the City's purpose in instituting its covered change in voting practice and procedure.

Such is not the case. For the following reasons the doctrines of *res judicata* and collateral estoppal are not applicable to the instant case:

1. The court below was not limited and did not limit itself to consideration of the evidence regarding purpose developed in *Holt I Appeal*, but considered additional, competent and persuasive evidence of the City's continuing impermissible purpose.

2. *All* parties in *Holt I*, *Holt I Appeal*, and the *Holt I* appellate Court agreed that the appellate court had no jurisdiction to consider any question arising under the Voting Rights Act.

3. The application of the principles of *res judicata* and collateral estoppel to the instant case would work a profound injustice.

4. Congressional policy indicates a clear intent to invest the court below with the exclusive and overriding obligation to inquire into the issue of the purpose underlying a covered change in voting practice and procedure.

#### *1. The court below was not limited and did not limit itself to consideration of the evidence regarding purpose developed in Holt I Appeal but considered additional, competent and persuasive evidence of the City's continuing impermissible purpose.*

The record presented in *Holt I* was enlarged upon in the Court below in a lengthy hearing before a specially

appointed Master. In addition to the compelling evidence of impermissible purpose presented in *Holt I*, the three-judge court below had before it the testimony of the City's own mayor wherein he admitted that a scheme had been devised whereby the requirement of a ward system could be circumvented upon expiration of the Voting Rights Act by resort to an at-large referendum on the question of whether the City should again resort to at-large voting in councilmanic elections. (See Argument C, *supra.*)

The Court below could not ignore this *new* evidence of the white power structure's continuing desire to dilute the black vote.

Moreover, the record below indicates a great reluctance on the part of the City to adopt *any* ward plan. That reluctance was itself further evidence of the City's impermissible purpose in enacting and seeking to retain its covered change in voting practice or procedure.

The relative ease with which the intervenor Crusade for Voters was able to devise a ward plan that went much further than the City's plan in alleviating the impermissible dilution caused by the annexation quite naturally warranted an inference that the City, in drafting its own ward plan, had not abandoned its impermissible purpose of diluting the black vote to the greatest extent possible (without, of course, losing the support of the Justice Department). The Court below, moreover, could not overlook the City's adamant opposition in *Holt I* to the acceptance of any ward plan that could have alleviated to any extent the purposefully devised dilution of black voting power.



The doctine of collateral estoppel requires, *inter alia*, identical evidence, "the determination of an issue by a judgment is not conclusive in a subsequent action involving the same issue as that involved in the prior action if since the bringing of that action there has been such a change of circumstances that the ground for the determination of the prior action is no longer controlling. (See § 54, Comment d) The collateral estoppel is effective only as to the determination of *the facts as they were when the first action was brought or determined.*" (emphasis supplied) Restatement, *Judgments*, § 68, Comment q, p. 312-13

***2. All parties in Holt I and the Holt I appellate Court agreed that the appellate court had no jurisdiction to consider any question arising under the Voting Rights Act.***

The City's claim to a collateral estoppel effect from the *Holt I* majority decision is totally at odds with the position it formerly took in that case before the Fourth Circuit and constitutes a breach of a clear understanding with that appellate court:

> At the request of the parties [including the City], we have proceeded to hear and decide the Fifteenth Amendment question, notwithstanding the fact that the Attorney General has filed an objection under the Voting Rights Act of 1965. *We have no jurisdiction to consider any problem arising under that Act*, and what we have said reflects no opinion as to the appropriateness of the Attorney General's objection. (459 F.2d 1100 [majority opinion])

Earlier the entire court, sitting *en banc*, had occasion upon a motion for clarification by Holt to express the scope and effect of its inquiry:

> This Court is only concerned with the Fifteenth Amendment questions arising out of the plaintiff's contentions, the plaintiff having disclaimed any reliance upon the Voting Rights Act of 1965 and any intention of invoking its remedies in this proceeding . . .
>
> The stay order does not affect in any way the objection of the Attorney General of the United States under the Voting Rights Act of 1965, and *neither it nor anything else done in this Court affects the rights of any party under the Voting Rights Act of 1965 or limits the obligations of or restrictions upon, any such party which arise out of the Voting Rights Act of 1965.* Order, March 1972, *Holt I Appeal, supra., en banc* (emphasis supplied)

The City itself agreed in response to interrogatories propounded by the *Holt I Appeal* Court stated:

> In this connection see the Supreme Court's reasoning in *Allen v. State Board of Elections*, 393 U.S. 544, 560, 22 L.Ed.2d 1, 14 (1969), where the complaint initially claimed violations under the Voting Rights Act of 1965 and the Fifteenth Amendment but the parties by stipulation removed the question of the Fifteenth Amendment prior to a hearing in the district court so that the case was submitted solely on the question of the applicability of the Voting Rights Act of 1965. If the parties might remove the Fifteenth Amendment question by stipulation, *it would follow that the plaintiff-appellee here could elect not to pursue a question arising under the Act* . . . the issues presented *arise solely* under the Fifteenth Amendment. (pp. 4, 13, *"Memorandum of Appellants in Response to Questions Presented by this Court by Letter Dated February 2, 1972"*, filed *Holt I Appeal, supra.*)



The City is thus playing another shell game with the issue of its impermissible purpose. In *Holt I Appeal* it argued rather successfully that the issue of impermissible purpose was irrelevant and only arose in the context of Voting Rights Act litigation. In deference to the preeminent position given the special three-judge court provided for in § 1973c of the Voting Rights Act, the Fourth Circuit accepted the City's reasoning and abstained from passing upon the central issue of purpose. Now, however, in a bald reversal of its previous position, the City would have this Court believe that *Holt I* decided the central issue of purpose even though at the City's own urging the Fourth Circuit denied any such intent or effect in its decision.

Where it is contemplated by all parties that subsequent litigation is required to settle an issue, prior litigation cannot be invoked under the principles of *res judicata* and collateral estoppel to bar a full inquiry into the issue relevant to that subsequent litigation:

> In our view the doctrine of collateral estoppel is not applicable where, as in this case, one ground of a judgment does not finally adjudicate the case on its merits but operates, much like a common law plea in abatement, to permit continued or further litigation upon an appropriate amendment or refiling, if relief continues to be withheld. In that event, a party may acquiesce in the judgment and take whatever steps are necessary to keep alive or rekindle his prayer for relief without being bound or estopped on the merits, and without

being required to burden the appellate courts with an essentially futile appeal. (*Stebbins v. Keystone Insurance Company*, 481 F.2d 501, 508 [C.A.D.C. 1973])

As both the City and Fourth Circuit obviously expected they would do, the *Holt* class rekindled their complaint by intervening in the instant litigation required under § 1973c of the Voting Rights Act. Essentially, the holding in *Holt I* merely caused an abatement of that class's complaint until the proper judicial remedy became available through congressionally mandated litigation.

### *3. The application of the principles of res judicata and collateral estoppel to the instant case would work a profound injustice.*

It is well settled that the principles of *res judicata* and collateral estoppel are never to be invoked where to do so would result in an injustice. Restatement, *Judgments*, § 70, p. 318-19. 66 Harv. L. Rev. 1, 29 "Collateral Estoppel by Judgment" by Austin Wakeman Scott ("Care must be exercised in its [collateral estoppel's] application to see that it works no injustice.")

> Since a failure in advocacy, the drawing of a wrong inference or a mistaken application of law may result in an erroneous finding, care must be taken to restrict collateral estoppel to those situations in which the advantages to be derived from preventing relitigation will not be outweighed by the injustice that may result by forclosing



> attack on prior determination. (65 Harv. L. Rev. 818, 840, "Developments - Res Judicata")

In *Holt I Appeal*, the Fourth Circuit majority viewed the issue of invidious racial purpose in adoption of the annexation as, at best, peripheral. In fact, that majority went so far as to say that "suspect legislative motivation" was irrelevant to the legality of "facially constitutional" legislation. (459 F.2d at 1098) Having so stated its view of the law in the context of a Fifteenth Amendment suit where all consideration of the Voting Rights Act had been specifically exluded by stipulation of the parties, the Fourth Circuit did not and had no reason to give careful scrutiny to the question of the City's purpose in adopting the annexation. In his dissenting opinion in *Holt I Appeal*, Judge Winter was quick to note that the majority had not been overly concerned with the evidence of invidious racial purpose underlying the adoption of the annexation by the City:

> The opinion of the majority may be read in vain for any adequate discussion of these findings [of invidious racial purpose by the district court] and any demonstration that they are clearly erroneous. Yet they are the crux of the case. The majority simply takes the position that the evidence to support them is extraneous to the issue. (259 F.2d at 1109)

By contrast, in congressionally mandated litigation under Section 5 of the Voting Rights Act, there is no such thing as "facially constitutional legislation." The legislative motivation in the adoption of such covered legislation is inherently suspect. If anything, legislation affecting voting is "facially unconstitutional." The

burden rests upon the covered state or its governmental subdivision to demonstrate that the covered change wrought by that inherently suspect legislation does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race. This was the issue before the three-judge court below. Quite naturally, it received a closer and more careful scrutiny than had been the case in *Holt I Appeal.* Elevating the casual remarks in the *Holt I Appeal* majority opinion to the status of a collateral estoppel effect would amount to a denial to the black intervenors of the full and intended benefit of the Voting Rights Act.

> [T]he prior judgment will not foreclose reconsideration of the same issue if that issue was not necessary to the rendering of the prior judgment, and hence was incidental, collateral, or immaterial to that judgment. [citations omitted] . . . [T]he decision on an issue not essential to the prior judgment may not have been afforded the careful deliberation and analysis normally applied to essential issues, since a different disposition of the inessential issue would not affect the judgment. *Irving National Bank v. Law,* 10 F.2d 721, 724. (2nd Cir. 1926) (L. Hand, J.).
>
> * * *
>
> [I]f the Court in the prior case were sure as to one of the alternative grounds and this ground by itself was sufficient to support the judgment, then it may not feel as constrained to give rigorous consideration to the alternative grounds. Note, Developments in the Law, Res Judicata, 65 Harv. L. Rev. 818, 845 (1952). (*Halpern v. Schwartz,* 426 F.2d 102, 105 [2d Cir. 1970])



The *Holt I* decision is a valuable reminder of the relative impotency of traditional Fifteenth Amendment remedies when invoked against the more subtle and sophisticated forms of voter discrimination. It was this proven impotency of traditional Fifteenth Amendment remedies that spurred the passage and helped sustain the constitutionality of the Voting Rights Act. It is well nigh universally conceded that the passage of the Voting Rights Act expressed congressional dissatisfaction with the availability and effectiveness of traditional remedies for discrimination in voting:

> Congress had found that case-by-case litigation was inadequate to combat widespread and persistent discrimination in voting, because of the inordinate amount of time and energy required to overcome the obstructionist tactics invariably encountered in these lawsuits. After enduring nearly a century of systematic resistance to the Fifteenth Amendment, Congress might well decide to shift the advantage of time and inertia from the perpetrators of the evil to its victims. (*South Carolina v. Katzenbach,* 383 U.S. 301, 328 [1966])
>
> The Voting Rights Act was aimed at the subtle, as well as the obvious, state regulations which have the effect of denying citizens their right to vote because of their race. . . . We are convinced that in passing the Voting Rights Act, Congress intended that state enactments such as those involved in the instant cases be subject to the § 5 approval requirements. ( Allen, *supra.*, 393 U.S. at 365-66)

To now deny the black intervenors the advantages secured to them under the Voting Rights Act on the grounds of *res judicata* or collateral estoppel because of their good faith pursuit of an admittedly inferior

traditional remedy would constitute a manifest injustice.

***4. Congressional policy indicates a clear intent to invest the Court below with the exclusive and overriding obligation to inquire into the issue of the purpose underlying a covered change in voting practice and procedure.***

The City argues, in effect, that a decision reached under traditional Fifteenth Amendment case law operates by means of *res judicata* and collateral estoppel to bar all subsequent inquiry into the issue of its impermissible purpose in adopting a particular annexation:

> On the contrary, § 2 of the Fifteenth Amendment expressly declares that "Congress shall have power to enforce this article by appropriate legislation." By adding this authorization, the Framers indicated that Congress was to be chiefly responsible for implementing the rights created in § 1. "It is the power of Congress which has been enlarged. Congress is authorized to *enforce* [emphasis in original] the prohibitions by appropriate legislation. Some legislation is contemplated to make the [Civil War] amendments fully effective." Ex Parte Virginia, 100 U.S. 339, 345, 25 L.Ed. 676. Accordingly, *in addition to the Courts*, [emphasis supplied] Congress has full remedial powers to effectuate the Constitutional prohibition against racial discrimination in voting. (*South Carolina v. Katzenbach*, 383 U.S. 301, 325-26 [1966]).

A congressionally desired, genuine and independent inquiry into the discriminatory purpose and effect of a



covered change by the United States District Court for the District of Columbia is "congressionally mandated."

> . . . Congress expressly reserved for consideration by the District Court for the District of Columbia or the Attorney General – the determination whether a covered change does or does not have the purpose or effect of "denying or abridging the right to vote on account of race or color." (*Perkins v. Matthews*, 400 U.S. 379, 385 [1971])

This clearly recognized congressional intent should not be sidestepped by resort to a mechanistic and unjust application of the doctrines of *res judicata* and collateral estoppel.

**E. The "Extra Burden" Argument of The City is a Quibble of Semantics**

The City would have this Court believe the court below engrafted "additional", i.e., "extra", burdens of proof beyond that required by law onto Section 5. Such is simply not the case. The City must carry its burden on both "purpose" and "effect." (See, e.g. *City of Petersburg, supra.*, at p. 1027)

There was no increase of burden placed on the City. As a fact, the lower court really relaxed the statutory burden relative to proof by allowing the City to "purge" itself of that taint though it had utterly failed to prove the absence of that taint. The statute says that the City must prove its changes do *not* have the purpose of denying or abridging the right to vote. The court below stretched the rule to say that if the City could not meet its burden directly, then an alternative

would be to show an eliminated effect coupled with some legitimate reason to justify retaining the area.

The court thus placed a "lesser" burden on the City, not an "extra burden."

The City would further suggest that the Court below would require racial gerrymandering. The Court never suggested that one race be granted representation out of proportion to its weight. The fact that the City had to prove some legitimate reason to justify retention of the area in no way relates to the question of proportionate representation. Had the court desired this result, it could have simply adopted a five or six black ward system. As the court pointed out:

> Richmond seems to interpret *Petersburg* to mean that, where a city elects its city council under a ward system, any expansion of its boundaries can defeat a § 5 challenge. This interpretation not only is contradicted by the plain language of *Petersburg*, requiring the city to "neutralize *to the extent possible* [emphasis in original] any adverse effect upon the political participation of black voters," 354 F.Supp. at 1031 (emphasis added), but also collapses under simple analysis. For *if Richmond's position were adopted*, the incumbent white political leadership of a city which already elected its councilmen under a single-member district ward system *could, without running afoul of §5, selectively annex as many additional white wards as it anticipated it needed to maintain the city's white political predominance*. Surely Congress *did not intend* § 5's "severe * * * procedure for insuring that States would not discriminate on the basis of race in the enforcement of their voting laws," *Allen v. State Board of Elections, supra* note 3, 393 U.S. at 556, *to be so easily circumvented*. (J.S. App. B, 28b) [emphasis supplied]



## F. The District Court Did Not Improperly And Erroneously Ignore the Attorney General's Approval of the City's Nine-Ward Plan

The City asserts that the court below improperly and erroneously ignored the Attorney General's approval of the City's Nine-Ward Plan. This is simply not the case. The City makes the bland assertion that the Attorney General's approval of the nine-ward plan was ignored, but addresses no evidence from the record to support that assertion. Naturally, the City is rankled by the refusal of the court below to acquiesce in the *endorsement* of the nine-ward plan by the Attorney General. Once suit was filed in the court below seeking a declaratory judgment that the annexation did not have the purpose and would not have the effect of abridging the right to vote on account of race, the Attorney General, by the express terms of the act, lost jurisdiction to approve the proposed voting change. Moreover, § 1973c does not speak, as the City would have one believe, of the Attorney General's "approval." Instead, it speaks of the Attorney General's "*failure to object*" (emphasis supplied) to such proposed change. Further, the Act provides that the failure of the Attorney General to object to a proposed voting change cannot bar a subsequent suit to enjoin the enforcement of that voting change.

One is at a loss to know what degree of deference the City would have had the court below pay to the Attorney General's endorsement. The failure of the court to defer to the opinion of the Attorney General does not constitute error unless there is some rule of

law or statute that requires that a § 1973c court defer to his opinion. There is none.

The court below had the responsibility of determining whether the annexation as modified by the nine-ward plan was for the purpose and would have the effect of denying or abridging the right to vote on account of race or color. The court below could hardly ignore the Attorney General's endorsement of the nine-ward plan. Aside from endorsing the nine-ward plan, the Attorney General played an entirely passive role in the proceedings below. If the court below was aware of anything emanating from the Attorney General, it had to be his endorsement of the nine-ward plan.

Congressional enactments providing for a three-judge court are to be strictly construed. *Allen v. State Board of Elections*, 393 U.S. 544, 561 (1969). § 1973c provides for the convening of a three-judge court to make a determination regarding a covered change to which the Attorney General has interposed an objection. This three-judge court must fulfill its statutory obligation in that mandated litigation and cannot defer to the judgment of a mere litigant. The record indicates that the three-judge court below performed its congressionally mandated duty in a thorough and conscientious manner. Its inquiry only began with acknowledgment of the Attorney General's endorsement of the nine-ward plan. It gave the annexation and its belatedly engrafted ward plan the careful scrutiny intended by the Act's Framers. It carefully considered all of the evidence regarding both the effect and the purpose of the annexation as modified by the nine-ward plan. The court below was also aware that the City had



a curious and largely unexplained aversion to drawing any ward plan that caused as much as a single ward to straddle the James River. The three-judge court knew that this self-imposed and irrelevant concern prevented the City from adopting a ward plan which more nearly cured the impermissible dilution of the black vote. The Attorney General's apparent willingness to ignore these and other relevant considerations did not make them any less compelling to the court below.

### G. The Court Below Made Its Findings of Fact Upon a Voluminous Record which Fully Supported Its Determination that Richmond Had Not Complied with the Act

The City alleges that no one, including the Holt Intervenors, understood that the annexation was covered by Section 5. Holt began seeking assistance from the Attorney General as early as 1969 and even sent a telegram to Mr. Justice Douglas in the late fall of 1969, seeking a reversal of the annexation decree which was then on appeal on the very grounds that it diluted his vote.

Further, the City knew that the Voting Rights Act covered all schemes no matter how subtle which were intended to abridge the right to vote. The City and its attorneys were intimately familiar with the purpose of this compromised annexation. To claim that they had no idea Section 5 covered schemes to disenfranchise is absolutely preposterous. What they really are saying is that they thought their invidious little scheme would work and that they had no idea the court would

specifically point to the annexation subterfuge as it did in *Perkins v. Mathews*, 400 U.S. 379.

It is of significance that while the City complains mightily of error by the court below, the appellant's brief is almost totally devoid of any meaningful references to the record to support their position. Nor does the City ever point out any specificity to any real factual or legal errors by the court below.

The simple facts are that the evidence is so overwhelmingly against them on every point that the City could never hope to meet its burden under the Act.

Even the City's attempt to disclaim their delay in this entire litigation falls flat. A quick reference to the course of the proceedings makes it abundantly clear that the City has merely continued the very practice which Section 5 sought to prevent. It has used the enormous financial and legal resources of the City to delay and frustrate the legitimate claims of its disenfranchised citizens, thereby again shifting the intolerable financial and time burdens to them that Section 5 was supposed to prevent.

## H. CONCLUSION

For the reasons stated herein, it is respectfully submitted that the judgment of the lower court should be affirmed, but because all the issues have been thoroughly litigated and the delay has continued so intolerably long, this Court should declare the proper remedy and remand the case for action consistent



therewith. It is further respectfully submitted that de-annexation is the most reasonable and effective remedy to cure the instant problem, reinstate the franchise to all the citizens of Richmond, and uphold the sanctity and force of § 5 of the Voting Rights Act of 1965.

Respectfully submitted,

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## CERTIFICATE

I hereby certify that I have served counsel of record with the foregoing Brief, by mailing, postage pre-paid, this 10th day of April, 1975.

W. H. C. VENABLE

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-201

CITY OF RICHMOND, VIRGINIA, *Appellant*,

v.

UNITED STATES OF AMERICA and
EDWARD H. LEVI, ATTORNEY GENERAL, and
CURTIS HOLT, SR. *et al.*, and
CRUSADE FOR VOTERS OF RICHMOND, *et. al.*,
*Appellees.*

On Appeal from the United States District Court
for the District of Columbia

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-201

CITY OF RICHMOND, VIRGINIA, *Appellant*,

v.

UNITED STATES OF AMERICA and
EDWARD H. LEVI, ATTORNEY GENERAL, and
CURTIS HOLT, SR. *et al.* and
CRUSADE FOR VOTERS OF RICHMOND, *et al.*,
*Appellees.*

**On Appeal from the United States District Court for the District of Columbia**

## BRIEF FOR APPELLEE CRUSADE FOR VOTERS

### QUESTION PRESENTED

Was the district court correct in holding that the City of Richmond was not entitled to a declaratory judgment under section 5 of the Voting Rights Act where the City annexed a white suburban area with the purpose and effect of denying and abridging the right to vote on account of race, and where the City (when it modified its proposed change by adopting a ward plan for city council elections) still failed to prove both that it had an objectively verifiable, legitimate purpose for the annexation and that its ward plan "neutralize[d] to the extent possible any adverse ef-

fect [of the annexation] upon the political participation of black voters"?

## STATEMENT OF THE CASE

This is the third case involving the application of section 5 of the Voting Rights Act to a municipal annexation to come before this Court;[1] it is one of nearly a thousand such annexations which have been submitted for review under that Act.[2] It differs from all those annexations by the glaring fact that the purpose of the annexation here at issue was to discriminate on account of race; that is, the purpose of the City of Richmond in annexing the territory here was to maintain white supremacy in the City Council and in the general governance of Richmond, Virginia.

The issues in this case center on the consequences of that fact.

The annexation in question took place in 1969, at a time when black voters were approaching parity or a majority in the City of Richmond. The pre-annexation population of Richmond was 202,359, 52 percent black and 48 percent white. The annexation added 47,000 people, 45,000 of them white. After annexation, the population of the City of Richmond was 58 percent white and 42 percent black.[3]

In the early 1960's, officials of the City of Richmond began exploring the possibilities of acquiring vacant land by seeking to annex territory from neighboring Chesterfield or Henrico Counties. The City initially

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[1] *Perkins* v. *Matthews*, 400 U.S. 379 (1971), *City of Petersburg* v. *United States*, 410 U.S. 962 (1973).

[2] Brief for the Federal Parties, p. 18, n. 5.

[3] *Holt* v. *City of Richmond*, 334 F.Supp. 238, 240 (E.D.Va. 1971).



pursued that objective cautiously, and in 1965 rejected an annexation court award which would have given it sixteen square miles of Henrico County territory in return for payments totalling $55 million.

Thereafter the City focused on annexing a portion of Chesterfield County, but that case too proceeded fitfully for several years, with the City and County far apart on the boundary line, compensation and other issues. By this time, the growing number of black voters had begun to be an object of concern to Richmond officials, and as early as 1965 the City's negotiations with Chesterfield County focused on the need for "at least 44,000 leadership-type affluent white people."[4] In subsequent years, numerous City officials expressed increasing fears—many of them in the crudest of terms—that black voters might gain controlling influence in Richmond elections.[5]

In 1969, the proceedings took on a new sense of urgency from the City's point of view. In the previous year's elections, black voters in Richmond had played a dominant role in electing three of the nine Councilmen, and there was a common feeling that the growing black vote might result in a black voting majority by the time of the 1970 elections.[6]

In the Spring of 1969, negotiations began in earnest between the Mayor of Richmond and the Chairman of the Chesterfield County Board of Supervisors. These negotiations were steadily reported to six members of the Richmond City Council, but were concealed from the three members who had been elected with black

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[4] App. 320-21.

[5] App. 293-352.

[6] App. 345-50.

voters' support.[7] During the negotiations, the City negotiators expressed two major concerns, both of which were markedly different from the City's professed aim of acquiring vacant land at a satisfactory level of compensation. Instead, the City focused only on (1) the number of white people who would be brought in by the annexation, and (2) hurrying the annexation to completion by December 31, 1969, so that the new residents would be eligible under Virginia law to vote in the 1970 Richmond City Council elections.[8]

In May the negotiators finally drew a line (which became known as the Horner-Bagley line) around an area which they knew contained about 45,000 white people, and agreed that the City would be given this area in return for payments of $27 million, and that the County would not appeal. Because the City's Boundary Expansion Coordinator, who had been employed for seven years to provide technical information,[9] was kept out of the negotiations, the area was selected without any knowledge of the amount of vacant land, the assessed value, or even the number of prospective schoolchildren—and it was later found, with embarrassment, that there were not enough schools for all the students who lived in the annexed area.[10]

The settlement agreement was presented to the annexation court in a semi-secret meeting between the members of the annexation court and the counsel for

[7] App. 357-62.

[8] App. 323-32.

[9] App. 352-54.

[10] *Holt* v. *City of Richmond*, 459 F.2d 1093, 1106 (4th Cir. 1972) (Butzner, J. dissenting).



City and County. The meeting did not include counsel for intervening county residents who were opposed to the annexation, and indeed much of the discussion in the meeting concerned how to deal with the intervenors.[11]

Three days later, the settlement agreement was presented, as planned, in open court, and ten days after that, on July 1, 1969, the annexation court adopted the agreement verbatim. In its opinion, that court observed that it had not felt bound by the agreement, which it termed unprecedented. The court nonetheless pointed out that the settlement agreement eliminated the need for it to evaluate the sharply conflicting evidence presented by City and County witnesses as to boundary line and compensation. Instead of balancing the equities, as the court noted it would have had to do in an ordinary annexation case, the court gave the settlement agreement great weight, and held that:

> "In sum, we believe that the boundary line set forth in the agreement should be the annexation line and that all terms and conditions specified should constitute the conditions of annexation verbatim, and we so adjudge." [12]

The intervenors took appeals which were quickly disposed of, and the annexation did go into effect on December 31, 1969.

### The Proceedings Below

The proceedings below began in early 1971, when, after this Court's decision in *Perkins* v. *Matthews*, 400 U.S. 379 (1971), the City submitted its annexation for review under section 5 of the Voting Rights Act. Dur-

[11] App. 48-53. See also *Holt* v. *City of Richmond*, 459 F.2d at 1110-11 (Winter, J. dissenting).

[12] App. 40-48.

ing the Attorney General's consideration of the submission, both sets of intervenors here, the Crusade for Voters and Curtis Holt, presented arguments showing why the annexation was discriminatory. On May 7, 1971, the Attorney General objected to the annexation but suggested that a shift to single-member district elections for City Councilmen might be enough to avoid the diluting effect of the annexation, and might therefore lead to section 5 approval. (There is nothing in the record to suggest that at that time the Attorney General was fully aware of the facts described above showing the discriminatory purpose of the annexation.[13])

The City took no action to comply with the Attorney General's objection for over a year. During that period, Curtis Holt, one of the intervenors here, filed a suit to enforce the objection, obtained an order from this Court enjoining the 1972 City Council elections, and then sought a summary judgment detaching the annexed area from a three-judge court in the Eastern District of Virginia. *Holt* v. *City of Richmond,* 406 U.S. 303 (1972) [commonly known as *Holt II.*] [14]

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[13] App. 166-167.

[14] After the City submitted its annexation for section 5 review, Holt first filed a fifteenth amendment suit (commonly known as *Holt I*), which was tried after the Attorney General had entered his section 5 objection. The district court found a fifteenth amendment violation based upon findings that the purpose of the annexation had been to discriminate against black voters. The Fourth Circuit (en banc, with Judges Butzner and Winter dissenting) reversed the judgment of the district court without quite reversing the findings. The Fourth Circuit's grounds for reversal instead seemed to rest on the view that discriminatory purpose is not an appropriate inquiry in fifteenth amendment cases. This Court denied certiorari. *Holt* v. *City of Richmond,* 335 F. Supp. 228 (E.D. Va. 1971), *rev'd* 459 F.2d 1093 (4th Cir. 1972), *cert. denied,* 408 U.S. 931 (1973).



Five days before the scheduled hearing on the motion for summary judgment, the City of Richmond filed this suit in the United States District Court for the District of Columbia. The original defendants were the United States and the Attorney General, but the Crusade for Voters and Curtis Holt each promptly moved, and were allowed, to intervene, and the case proceeded with three sets of defendants.

The City's initial complaint sought a section 5 declaratory judgment that its annexation, even in the context of at-large city elections, had no discriminatory purpose and would have no discriminatory effect. After this Court upheld a denial of a similar declaratory judgment in *City of Petersburg* v. *United States,* 410 U.S. 962 (1973), in March 1973, Richmond adopted a single-member district plan for its councilmanic elections, and thereafter sought a declaratory judgment that its annexation, as modified by the adoption of district elections, lacked the prohibited discriminatory purpose and effect.

At this point, appellees do not understand Richmond to argue that it is entitled to have its annexation and keep its at-large elections too; rather, the issue in the case is limited to whether the City's district plan is adequate to justify section 5 clearance of the annexation.

**Presentation of Single-Member Plans**

As early as the Fall of 1971, the City began devising and filing single-member district plans.[15] Some time after the *Petersburg* decision, when this case had been in discovery for six months, the City (without consulting defendant-intervenors) presented four single-mem-

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[15] App. 200.

ber district plans for discussion with the representatives of the Attorney General. The Attorney General suggested that one of those plans, with some modifications, would probably pass muster. The City made the requested changes, and then presented this plan to the defendants and defendant-intervenors for their signature on a consent decree. The Attorney General did consent, but both intervenors refused.

Shortly thereafter, the Crusade presented several alternate plans which it believed would better ameliorate the dilution caused by the annexation, if anything could.[16] The record is plain that the City never analyzed any of the Crusade's plans to see whether they were more effective in minimizing dilution, or whether they were superior by any other standard.[17] Instead, the City, having adopted its plan, thereafter would not consider any changes.[18]

After the City's failure to secure acceptance of its proposed consent agreement, the District Court for the District of Columbia referred the case to a Special Master, who held three days of trial in October 1973, and reported his findings and conclusions back to the court. The Special Master found that the annexation, even as modified by the single-member districts, did not comply with section 5, because of the discriminatory purpose and because the City's district plan (es-

[16] The Crusade presented three plans (N, O and P) at a pre-trial hearing held on July 23, 1973, marked for identification at the Special Master's trial as Crusade exhibits 17-19. The Crusade filed two additional plans in September (Q and R) which were introduced at the Special Master's trial as Crusade exhibits 20 and 21 and are reproduced at App. 164-65.

[17] Special Master's trial transcript 711-27.

[18] App. 200, 209-12.



pecially as compared to the Crusade's plans) did not minimize dilution to the extent possible.[19]

Various parties filed objections to the report of the Special Master, but these objections were principally to the legal conclusions. The objections were heard by the district court, which held that the declaratory judgment must be denied because, even as to the annexation as modified by the ward plan, the City had failed to meet its burden of proof as to *both* purpose *and* effect:

> (1) "Richmond has failed to present substantial evidence that its original discriminatory purpose did not survive adoption of the ward plan." (J.S. App.-20b)
>
> (2) "The annexation also had a discriminatory effect under the *Petersburg* standard since the ward plan was not 'calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters.'" (J.S. App.-28b)

The District Court for the District of Columbia carefully distinguished *City of Petersburg* v. *United States,* 354 F. Supp. 1021 (D.D.C. 1972), *aff'd,* 410 U.S. 962 (1973), where the annexation had not been discriminatory and where the single-member plan adopted by the City was agreed by all parties to minimize dilution to the extent possible.[20]

This appeal by the City of Richmond followed.

[19] J.S. App. 1c-16c.

[20] The reported *Petersburg* decision involved only the definition of the standard of minimizing dilution; the actual approval of a plan came on remand, *City of Petersburg* v. *United States,* C.A. No. 509-72 (Order of April 13, 1973)

## SUMMARY OF ARGUMENT

Section 5 of the Voting Rights Act requires that any covered jurisdiction bear the burden of proving that any voting changes are nondiscriminatory both in purpose and effect. In this case, Richmond abandoned its initial claim that its annexation, without modification, can meet that burden. Instead, Richmond has modified its annexation by shifting from an at-large system to single-member districts for its City Council elections in an attempt to meet its burden.

Both sets of intervenors and the federal parties (i.e., all parties except the City of Richmond) agree that the district court posed the correct questions in asking whether Richmond's modification had dispelled the discriminatory purpose and affect of the annexation. Those questions, both of which Richmond must answer in the affirmative, are (1) whether there was an objectively verifiable, legitimate purpose for the annexation, apart from the impermissible racial purpose; and (2) if so, whether the City's districting plan is calculated to eliminate the diluting effects of the annexation to the extent possible.

We differ from the federal parties not in the questions but in the answers. Unlike the federal parties we do not believe the City has made any showing that this annexation is one which the City would have made if not for its intense desire to bring in massive numbers of white people. And, in light of Richmond's rejection of an earlier annexation award and in light of the Commonwealth's current moratorium on annexations, it is far from clear that Richmond would have chosen to complete any other annexation by this time, if motivated solely by legitimate considerations.



Again, unlike the federal parties, we do not believe that Richmond's ward plan for electing City Councilmen is sincerely or effectively calculated to neutralize the diluting effect of the annexation. Rather, Richmond has adopted a plan which guarantees continued white control, and has steadfastly refused even to look at alternatives proposed to it; the City appears to take the view that its willingness to adopt a ward plan at all satisfies the "effect" test of the *City of Petersburg* case.

For these reasons, the declaratory judgment sought by the City of Richmond was correctly denied. Following the new elections which must be held within the pre-annexation borders of the City, Richmond will be free to seek annexation anew, if it still wishes to do so. The passage of time and the political changes which will undoubtedly be reflected in the new elections will create new perspectives which will affect Richmond's ability to take those actions nondiscriminatorily. This annexation, however, violates the Voting Rights Act.

## ARGUMENT

The tortuous history of this case tends to obscure the fact that the issues are simply novel variations on themes which this Court has confronted several times in recent years. Beginning with the Tuskegee case of fifteen years ago, this Court has often dealt with racially motivated impairments of the right to vote which have been "cloaked in the garb of the realignment of political subdivision." *Gomillion* v. *Lightfoot,* 364 U.S. 339, 345 (1960).

In *Gomillion,* the Alabama legislature had fenced out virtually all of Tuskegee's black residents by reshaping the City's boundaries from a square into an uncouth

twenty-eight-sided figure. This Court struck that change down as a violation of the fifteenth amendment, which "nullifies sophisticated as well as simple-minded modes of discrimination." *Lane* v. *Wilson,* 307 U.S. 268, 275 (1939).

After passage of the Voting Rights Act of 1965, which outlawed many of the more obvious forms of discrimination, "gerrymandering and boundary changes [became] prime weapons for discriminating against Negro voters." *Perkins* v. *Matthews,* 400 U.S. 379, 389 (1971). This Court then made it clear that section 5 of that Act covers such boundary changes because "section 5 was designed to cover changes having a potential for discrimination in voting, and such potential inheres in a change in the composition of the electorate affected by an annexation." *Ibid. See also Georgia* v. *United States,* 411 U.S. 526, 534 (1973).

Every party in this case but the City of Richmond agrees with the finding of the Special Master and of the District Court for the District of Columbia that the annexation in question had both a discriminatory purpose and a discriminatory effect. *See, e.g.,* Brief for the Federal Parties, at 16. Such an annexation is barred by section 5 of the Voting Rights Act, which provides that no covered jurisdiction may enact or seek to administer a voting change unless it can prove that the change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color." 42 U.S.C. § 1973c.

As originally filed, this action asked for a declaratory judgment simply approving the addition of the annexed area voters. While this case was pending, however, this Court affirmed *City of Petersburg* v. *United States,* 354 F. Supp. 1021 (D.D.C. 1972), *aff'd,* 410 U.S. 962 (1973). In that case, the district court held that, although a particular annexation had no discriminatory purpose, it did have a discriminatory *effect.* The court found that that effect could be overcome if the City changed from at-large City Council elections to a ward system "calculated to neutralize to the extent possible any adverse effect upon the political participation of black voters." *City of Petersburg* v. *United States,* 354 F. Supp. 1021, 1031 (D.D.C. 1972).



Petersburg appealed, claiming that it was entitled to the annexation without having to abandon at-large elections. When this Court affirmed *Petersburg,* Richmond changed course in this case, and soon presented a ward plan to the district court, urging that its annexation, as modified by the ward plan, should be approved under the *Petersburg* rule.

From that point to this, Richmond has steadfastly ignored the major distinction between this case and *Petersburg*: the discriminatory purpose of the Richmond annexation. Indeed, the approach of the City throughout this case has been disingenuously to cloak its purposely discriminatory annexation in the garb of a legitimate boundary change. The City's repeated references to "incidental voting changes," *e.g.,* Brief of the Appellant, p. 33, bring to mind this Court's statement in *Gomillion*:

> ". . . [T]he Alabama Legislature has not merely redrawn the Tuskegee city limits with incidental inconvenience to the petitioners; it is more accurate to say that it has deprived the petitioners of the municipal franchise and consequent rights and to that end it has incidentally changed the city's boundaries." 364 U.S. at 347.

Both Richmond and the federal parties take the position that the ward plan adopted by the City cleanses the annexation of both its racially discriminatory purpose and its racially discriminatory effect. The Crusade for Voters, however, agrees with the district court that, in view of Richmond's failure to prove that *this* annexation has an objectively verifiable, legitimate purpose besides race and in view of Richmond's further failure to prove that its ward plan neutralized the annexation's diluting effect to the extent possible, Richmond did not meet the burden of proof imposed upon it by the Voting Rights Act and its request for declaratory judgment could not be granted.

### I. The City Of Richmond Has Not Met Its Burden Of Proof That The Annexation, As Modified By The Ward Plan, Does Not Have The Purpose Of Discriminating On Account Of Race.

Judge Butzner was correct in saying that "Virginia's annexation laws, though fair on their face, were deliberately used to debase the votes of the black citizens of Richmond." *Holt* v. *City of Richmond,* 459 F.2d at 1100. Richmond does not appear directly to rebut the massive evidence of racial purpose, but rather relies on two circumstantial arguments: (1) the need for central city expansion generally; and (2) the ratification of the annexation here by two courts, the state annexation court and the fourth circuit. As is shown below, neither of these circumstances is sufficient to dispel the clear showing of the City's racial purpose in its annexation.

#### A. There is no objectively verifiable, legitimate purpose for annexation

The City relies heavily on general statements that central cities need to expand and that Richmond's need for expansion made some annexation inevitable. *E.g.,* Brief for the Appellant, pp. 53-59. The United States supports this view. Brief for the Federal Parties, pp. 30-33.



But a close look at the discussion shows that there is virtually nothing to support a claim that *this* annexation is economically beneficial, or that it would have been undertaken if not for the impermissible purpose of diluting black votes. The area finally annexed had substantially less vacant land and commercial or industrial land than was initially sought in the Chesterfield suit or was sought and rejected in the Henrico suit. City Manager Kiepper testified that the need for annexation had been brought home to him when he could not find a 350-acre site in the old City for a warehouse. *Holt* tr., pp. 536-37. But the figures cited by Judge Butzner suggest that the City would not find such a site in the annexed area either:

> "Although the City professed that it was seeking vacant land for business and industry, it settled for only 475 acres (.74 of a square mile) of potential industrial land, and 729 acres (1.1 square mile) of potential commercial land. Developed industrial and commercial land amounted to even less—312 acres, industrial; and 351, commercial." *Holt* v. *City of Richmond,* 459 F.2d 1093, 1105-06 (4th Cir 1972) (Butzner, J., dissenting).

The City's Brief also relies heavily on "facts" which are thought to be obvious, but for which no proof is cited:

> "The high class suburban area comprising most of the annexation area needs far fewer services than the central city.
>
> * * *

> "It needs no citation of authority to support the proposition that the higher the level of income the less the requirement for municipal services. More affluent citizens need less welfare, less police, less recreation, on and on throughout the list of normal municipal services required by the old central City." Brief for the Appellant, pp. 57-58.

It may be that affluent suburbanites do not *need* as much of some expensive services, but it is at least as likely, *a priori,* that they will be able to demand and—because of their political influence—be able to obtain other expensive services which poorer people may not want, need, or get.[21] To accept the City's supposition requires us to believe that our city governments habitually spend more money in poor neighborhoods than in rich ones—a belief that not many people would cling to without proof. See *Hawkins* v. *Town of Shaw,* 461 F.2d 1171 (5th Cir. 1972) (*en banc*) *aff'g* 437 F.2d 1286 (1971).

The United States claims that the testimony of Chesterfield County Administrator Burnett is not conclusive proof that the annexation produces an economic loss, but the burden was on the City to prove, not the defendants to disprove, a nondiscriminatory ground for the annexation. The United States' conclusion that the evidence "amply supports" the City's contention that *this* annexation is economically beneficial, Brief for the Federal Parties, p. 33, is based on nothing more than

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[21] See *e.g.* Thomas Muller, *Fiscal Issues of Local Growth,* PUBLIC MANAGEMENT, May 1974, at 5:

> For example, recent studies show that when a suburban area is developed, "[u]nless local revenues from these new households are substantially above the community average, new residents will pay less than the incremental costs of public services they consume, causing a fiscal deficit."



a citation to pages of the City's Brief, and those pages only confirm the district court's finding that no "objectively verifiable, legitimate purpose for annexation" had been shown.

Especially in these times, when scholars and public officials are beginning to question the wisdom of large annexation, and when Virginia itself has enacted a five-year moratorium on annexations,[22] *Holt, supra,* at 1105n.11, it cannot be assumed that Richmond would unquestionably have proceeded with an annexation had it not been for the urgent need for "44,000 leadership-type affluent white people."

**B. Neither prior court decision insulates Richmond's annexation from a finding of bad purpose.**

Richmond's Brief refers several times to the state court's annexation decree, suggesting that this decree immunizes the annexation. This theme was echoed by the fourth circuit in *Holt,* when it found that "no violation of any Fifteenth Amendment right was worked by the annexation, effected, as it was, by the decree of the state court." 495 F.2d at 1100.

But section 5 is clear in making it irrelevant that a state court plays a role in bringing about a voting change. The language of the statute itself provides that a covered jurisdiction may not "enact or seek to administer" a covered voting change without going through section 5 review procedures. Moreover, a state chancery court had entered the Canton, Mississippi, annexations which were held to be reviewable in *Perkins* v. *Matthews, supra.* Finally, in this case, the annexa-

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[22] Judge Mehrige's belief in *Holt* that some annexation was inevitable was formed before the enactment of Virginia's moratorium.

tion decree was in fact the work of the City and County rather than the annexation court. Even without the evidence that the annexation court "was badly used," as Judge Winter put it 459 F.2d at 1110, that court's role in this case would not affect the section 5 question.

The City places even stronger reliance on the decision of the fourth circuit in *Holt* v. *City of Richmond, supra,* which it claims is fully conclusive of the purpose question under the doctrines of *res judicata* or collateral estoppel. Brief for the Appellant, pp. 28-32.

The United States has ably pointed out why the City is wrong on this point, in view of the difference in parties between this case and *Holt,* in view of the fourth circuit's disclaimer of any intention or jurisdiction to reach questions under section 5 of the Voting Rights Act, and in view of the difference in the burden of proof. *See* Brief for the Federal Parties, pp. 16-17 n.4.

In *Holt,* the burden of proving a violation was placed upon the plaintiff challenging the annexation, whereas in a section 5 case the burden is shifted to the governmental body seeking to justify the voting change. *Georgia* v. *United States,* 411 U.S. 526, 538 (1973). That difference is enough to preclude application of the doctrines of collateral estoppel or *res judicata. One Lot Emerald Cut Stones* v. *United States,* 409 U.S. 232 (1972).

Moreover, in *Holt* the fourth circuit largely declined to consider the claim of unconstitutional purpose, holding that a court could strike a legislative action only in the exceptional case "when its sole or clearly dominant purpose was both obvious and constitutionally impermissible." *Holt, supra,* at 1097-99, citing, *inter alia,*



*United States* v. *O'Brien,* 391 U.S. 361 (1968); *Palmer* v. *Thompson,* 403 U.S. 17 (1971).

Section 5, on the other hand, explicitly requires courts to look into the question of unconstitutional motivation:

> ". . . [T]he burden of proof is placed upon the jurisdiction to show that the new voting law procedure does not have the purpose or effect of discrimination. Those who know the law of procedure best and what motivated its passage must come forward and explain it. Because section 5 strips away the presumption of the legality that so often cloaked imaginative and clever schemes, and because section 5 requires the jurisdiction to explain, the existence of section 5 serves to prevent multiplication of such schemes." [*Hearings on H.R. 4249, H.R. 5538, and Similar Proposals, Before Subcomm. 5 of the House Comm. on the Judiciary,* 91st Cong., 1st Sess., ser. 3, at 270 (1969) (remarks of Rep. McCulloch).]

In a section 5 case, the inhibition on examining legislative purpose is removed by Congressional direction, thus providing another significant distinction between the question raised in this case and that involved in *Holt. See United States* v. *O'Brien,* 391 U.S. at 383n. 30. *See also Gomillion* v. *Lightfoot,* 364 U.S. at 347.[23]

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[23] The *Holt* court also failed to examine the effect of the annexation on black votes, an examination which the district court here was of course required to and did make. Compare *Wright* v. *Council of the City of Emporia,* 407 U.S. 451, 460-62 (1972); *United States* v. *Scotland Neck City Board of Education,* 407 U.S. 484 (1972).

**II. The City's Adoption Of A Ward Plan Did Not Minimize The Dilution To The Extent Possible.**

The City's Brief takes the position that its decision to adopt a ward plan, without more, minimized dilution to the extent possible and therefore eliminated any invalid effect flowing from the annexation. Brief for the Appellant, pp. 46-47. The City attempts to bolster its argument by setting out figures which purport to show that black voters under its plan will exercise electoral influence proportional to their number, and to the black percentage of the pre-annexation voting-age population. The City argues that alternate plans presented by the Crusade intervenors produce racial gerrymandering, Brief for the Appellant, pp. 39-40; or as the United States puts it, "substantially disproportionate majority representation." Brief for the Federal Parties, pp. 27-29.

But there is no evidence in the record to support the supposition that the Crusade's plans produced this effect. The Crusade has in fact tendered five plans at various times, in which the percentage of black citizens residing in Ward H ranged from 44 to 59 percent, compared to the City's plan. The Crusade never claimed that any of its plans was mandatory but simply that they showed more effective alternatives available. The City erred in refusing even to consider the Crusade's plans, which not only arguably minimized dilution to a greater extent, but also were closer to meeting standards of population equality, and which met other criteria well.

The record shows that once the City adopted its plan, which provides for five certain white seats, it refused ever to consider any alternate plans. See notes 17 and 18, *supra*. The only reason ever given by the City for refusing even to consider or analyze alternative plans was a desire not to have any wards that included territory lying on both sides of the James River. Compare App. 213 with App. 487-96. But it was clear that the City's preoccupation with the river was a new development, since every one of the plans drawn during the two years before the adoption of the final plan had had at least one ward which crossed the water. It was also clear that insistence on maintaining the river as an inviolate boundary would automatically limit the degree to which dilution could be minimized. J.A. 209-15, 221. See *Keyes* v. *School District No. 1,* 413 U.S. 189 (1973); *Davis* v. *Board of School Commissioners,* 402 U.S. 33 (1971); *Medley* v. *School Board of Danville,* 482 F.2d 1061 (4th Cir. 1973), *cert. denied,* 414 U.S. 1172 (1974).



The Special Master found specifically that the City had not proved that its interest in avoiding wards that crossed the river was enough to justify dilution of black citizens' votes, and both he and the District Court for the District of Columbia held that the existence of the Crusade's plans, and the City's refusal to consider them, made it impossible for the City to meet its burden of proof.[24] In the context of an annexation undertaken to maintain white control of the City Council, adoption of a plan which guaranteed that five of the nine City Council districts would be unquestionably white could be seen as an extension of the City's purpose in annexing the territory initially. J.S. App. 25b-27b.[25]

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[24] *Kirkpatrick* v. *Preisler,* 394 U.S. 526, 529 (1969).

[25] *Wright* v. *Council of City of Emporia,* 407 U.S. 451, 461 (1972).

Finally, even if it were determined that the Crusade's plans were benign districting,[26] and unconstitutional for that reason, the City's plan might still be inadequate; while it might minimize dilution to the extent possible, that might still fall short of compensating for the degree of discrimination brought about by the annexation. The *Petersburg* case does not hold that every discriminatory annexation can be neutralized by shifting to single-member districts, and it may be that Richmond's is one that cannot. Richmond's annexation added the equivalent of one and one-half wards of white residents and the City is being disingenuous when it claims that simply carving up the enlarged city is bound to neutralize the diluting effect of the expansion. All these reasons support the district court's view that Richmond's unexplained refusal even to consider the Crusade's alternate plans contributed to the City's failure to meet its burden of proof.

### III. The District Court's Disposition Was Appropriate

The district court's discussion of de-annexation obscures the fact that the only order it entered was one denying a declaratory judgment. To be sure, the effect of this order is to restrain Richmond from allowing residents of the annexed area to vote in its elections. While this leaves de-annexation as a virtually inevitable consequence, it is a de-annexation which would be ordered by either the District Court for the Eastern District of Virginia or a state court.

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[26] Quaere whether "benign districting" may sometimes be appropriate to "overcome the residual effects of past state dilution of Negro voting strength." *Taylor* v. *McKeithen*, 407 U.S. 191, 193 (1972).



The United States argues that the case should be remanded for further testimony to allow the City to meet its burden of proving an objectively verifiable basis for the annexation, but this case has gone on too long for that. Eight years have passed since the last valid City Council election in Richmond, the City has had repeated opportunities which it has foregone, and there is no reason for delay now.

This does not mean, despite the City's fears, that cities are prevented from expanding with the times, nor even that Richmond is necessarily locked into its borders. Nothing prevents Richmond from seeking another annexation upon completion of this case. And if a new annexation is sought, the intervening passage of time and one or more nondiscriminatory elections should allow Richmod to go forward, if it still wishes to, with a legitimate rather than a racist annexation.

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-201

Supreme Court, U. S.
FILED
APR 22 1975
MICHAEL RODAK, JR., CLERK

CITY OF RICHMOND, VIRGINIA,

*Appellant,*

v.

UNITED STATES OF AMERICA and
WILLIAM B. SAXBE, ATTORNEY GENERAL, and
CURTIS HOLT, SR. *et al.* and
CRUSADE FOR VOTERS OF RICHMOND, *et. al.*,

*Appellees.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

## REPLY BRIEF FOR THE APPELLANT

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IN THE

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CITY OF RICHMOND, VIRGINIA,

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---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

---

## REPLY BRIEF FOR THE APPELLANT

---

### THE CRUSADE HAS FORESWORN ITS EARLIER POSITION

The Crusade For Voters (Crusade), in an about face, has adopted Holt's position in its Brief proper as to de-annexation, thereby abandoning its earlier position.

Before the Court below, the Crusade argued strongly for a "fairly drawn ward plan", and was diametrically opposed to de-annexation, for good reason. For example, in its *Objections to Report of Special Master,* (in Court below) which recommended de-annexation, the Crusade noted, at p. 2, 3:

> "The result was a decision which sacrifices the real voting interests of live black voters in the City of Richmond in order to preserve the Voting Rights Act as an abstraction.
>
> "This ironic result comes about because the Special Master's recommendation would return Richmond to its old boundaries. Elections would be conducted on the old at-large basis, in contrast to the Crusade's proposal that dilution would be avoided by allowing Richmond to expand and by holding elections according to a fairly drawn nine-ward system.
>
> "The reality is that the Special Master's conclusion hurts black voters in Richmond for two fundamental reasons:
>
> "(1) As a practical matter, because of the comparative population and registration figures by race in the old City, and because of the realities of at-large elections, black voters in Richmond stand a better chance of exercising real influence with their votes under a fairly drawn ward election system – even with additional white voters – than under at-large elections;
>
> "(2) To the extent that Richmond's black voters do exert influence in the governance of their city, it is no great gain to exercise that influence in a worn-out shell which does not have the room nor financial resources to provide a good life for its citizens."



Further, at page 7 of its *Objections to Report of Special Master,* the Crusade stated:

> "If deannexation were ordered, the potential benefits of annexation would not be realized and additional problems would arise. In particular, the Richmond public schools would instantly be transformed from a black majority system to a virtually all-black system with staggering implications for the course of the desegregation efforts in which Richmond blacks have been involved for more than a decade.
>
> "The testimony and problems referred to above make it clear that the City of Richmond will suffer substantial economic and social deprivation if deannexation is ordered. . . ."

and, again, at page 9, the Crusade states:

> "Deannexation in this case would be a perfect example of the solution which is obvious but wrong."

Finally, in concluding, at page 10, the Crusade stated:

> "The Crusade for Voters of Richmond submits that the report of the Special Master should be rejected insofar as it recommends deannexation. . . ."

The Crusade proposed ward plans (J.A. 163, 164, 165), as discussed by both the City and the Federal Parties in their Briefs on the Merits, had no relation to voting age population, or, indeed, to present population. They were designed solely to provide a black majority on the City Council, and would result in substantially disproportionate representation. Whether or not it now feels that such plans may be unconstitutional themselves, the valid factual and legal

reasons why de-annexation is improper have not changed. The minds of the Crusade may have changed, the facts have not.

The Crusade states that, in the event of de-annexation, "Nothing prevents Richmond from seeking another annexation upon completion of this case." (Crusade Brief, p. 23). This is not true, as is pointed out by the Crusade in the same brief, at page 17, in that "Virginia itself has enacted a five-year moratorium on annexations. . . ."

## THE ATTORNEY GENERAL'S ROLE IS NOT A "PASSIVE" ONE, AND HIS OPINION IS ENTITLED TO GREAT DEFERENCE.

The Court below, because of an ostensible impermissible purpose, has required an "extra burden" of the City, "to purge itself of discriminatory taint." (JS App. B, p. 20). In the factual situation here, this can only mean that the City is required to somehow purge itself of the *purpose* by showing that the *effect* of its voting change will be disproportionately favorable to the black voting population. The Intervenors Crusade and Holt both attempt to support this "extra burden" requirement, but in fact fail to do so, and in failing to do so, they, as did the Court below, gave no weight whatever to the fact that the 9-Ward Plan presented by the proposed Consent Judgment herein had and has the approval of the Attorney General of the United States.

As the City has stated in its brief (p. 38-39), this is an improper amendment to the Act, formulated by the



Court. Nowhere in the Act, or the legislative history, does such a requirement appear, and nowhere there is it suggested that two distinct violations as to "purpose" and "effect" could occur.

In reaching its conclusion, the Court below has ignored the view of the Attorney General, the officer charged with enforcement of the Act. (United States' Motion For Modification Of Master's Report, [in Court below] pp. 4-6; Brief For The Federal Parties, p. 13, 27-29).

The Attorney General's opinion is entitled to great deference, and should not be ignored. This Court stated in *Perkins v. Matthews*, 400 U.S. 379, 390-391:

> "Our conclusion that both the location of the polling places and municipal boundary changes come within § 5 draws further support from the interpretation followed by the Attorney General in his administration of the statute. '[T]his Court shows great deference to the interpretation given the statute by the officers or agency charged with its administration.' Udall v. Tallman, 380 US 1, 16."

In *Udall v. Tallman*, 380 U.S. 1, in considering the effect of an Executive Order upon the Secretary of the Interior's authority to issue oil and gas leases, the Court upheld the Secretary's interpretation of the order. Quoting *Power Reactor Co. v. Electrical Union*, 367 U.S. 396, 408, the Court added:

> " 'Particularly is this respect due when the administrative practice at stake "involves a contemporaneous construction of a statute by the

men charged with the responsibility of setting its machinery in motion, of making the parts work efficiently and smoothly while they are yet untried and new.'' ''

This is our situation in the instant case. The Act itself, of course, is not new, but the application to the factual situation here is most certainly so.

The Attorney General's opinion is entitled to equal deference as to his approval of the City's 9-Ward Plan, at issue here. (MCX 15, J.A. 161). As pointed out in the City's brief (p. 62), the Court below gave no weight to his approval. Intervenor Holt's assertion that, aside from endorsing the Plan, the Attorney General's role was a passive one (Brief for Appellee Holt, p. 55) cannot be supported.

Indeed, the Attorney General and the United States are, with the City, the real parties herein. It is the Attorney General's duty to enforce the Act, and he is given equal responsibility with the District Court for an initial decision upon voting changes. He is the only "expert" we have in this area. His interpretation is entitled to great deference. *Perkins v. Matthews,* 400 U.S. 379, 390-391; *City of Petersburg v. United States,* 354 F. Supp. 1021, 1031 (D.D.C. 1972), *aff'd,* 460 U.S. 962.

## THE CRUSADE'S RELIANCE ON *GOMILLION V. LIGHTFOOT* IS MISPLACED

The Crusade's attempt to characterize this case as one similar to *Gomillion v. Lightfoot,* 364 U.S. 339, (Brief p. 11, 13), is misplaced. That case established



that redistricting done with a purpose of completely excluding black voters from a city violates the Fifteenth Amendment. There is nothing of that sort involved here.

This case is a progeny of *Perkins v. Matthews,* 400 U.S. 379, involving a dilution of black voting strength. *Id.* at 390. That case rested upon the concept of voting set out in *Reynolds v. Sims,* 377 U.S. 533, an equal protection, Fourteenth Amendment consideration. *Perkins v. Matthews, supra* at 390.

Indeed, here the redistricting – the annexation plus the 9-Ward Plan, not only does not exclude blacks from the City or from the political process, it enhances black voting strength. (Appellant's Brief, p. 42, 43; Brief of the Federal Parties, p. 24).

The Crusade, in fact, effectively adopts the Master's conclusion that an impermissible purpose can never be cured, since dilution cannot be more effectively eliminated than is done by the 9-Ward Plan. If the 9-Ward Plan does not effectively eliminate dilution, what can? Anything further would be racial gerrymandering in itself, causing a disproportionate number of black seats on the City Council, and would appear to run afoul of both the Act and the Constitution.

## THE OBJECTIVELY VERIFIABLE, LEGITIMATE PURPOSES OF THE ANNEXATION HAVE BEEN PROVEN, AS SHOWN BY THE RECORD

Both Intervenors Holt and the Crusade continue to argue in their Briefs that the City has shown no

legitimate purpose for the annexation. (Crusade Brief, p. 14; Holt Brief, p. 25, 28). We do not repeat here the arguments, based on the extensive record, which totally refute that contention. (Brief For the Appellant, pp. 51-59; Brief for the Federal Parties, pp. 30-35). We are constrained to point out the following misconceptions of the Crusade and Holt.

Intervenors belittle the effect of the annexation decree of the Virginia Court (J.A. 40). The duty of that Court was to determine whether there was any "necessity for and expediency of annexation", the statutory guide. § 15.1-1032 *et seq.*, Ch. 25, Code of Va. To do this, the City had to prove the legitimate purposes and needs for annexation. The Intervenors speak only of the compromise in drawing the boundary line. That was not a compromise as to the essential issue – the necessity for annexation of some territory from Chesterfield County. The Annexation Court found that "the evidence overwhelmingly convinces us of the necessity for and expediency of some annexation. . . ." (J.A. 42). The Annexation Court did, indeed, decide this question.

Further, Intervenors rely upon the District Court decision in *Holt v. City of Richmond*, 334 F. Supp. 228 (E.D. Va. 1971), *rev'd*, 459 F.2d 1093 (4th Cir. 1972), *cert. denied*, 408 U.S. 931 (*Holt I*), for the finding of impermissible purpose. Indeed, the only evidence of purpose is from that record, the District Court having found that the compromise agreement, affecting the 1970 election, was wrong. (It is a fact that, given the racial make-up of the population, any annexation, with any boundary line, would involve a greater majority of white persons, and a small minority



of blacks). However, that District Court also found that annexation was necessary and that the City would ultimately prevail in annexation. 334 F. Supp. 234, 236.

The necessity for, and legitimate purposes of, the annexation were thus apparent to the *Holt I* District Court.

The Crusade cites Thomas Muller, *Fiscal Issues of Local Growth*, PUBLIC MANAGEMENT, May 1974, for the proposition that annexation of a suburban area may cause a fiscal deficit. (Brief p. 16). This is, of course, a general statement. However, Thomas Muller, co-author with Grace Dawson, of "The Impact of Annexation on City Finances: A Case Study in Richmond, Virginia," The Urban Institute, May, 1973, a study specifically concerning Richmond, found that Richmond realized a surplus from the annexation. We are concerned with the actual case of Richmond, not generalities.

## THE PURPOSE OF THE HEARING BEFORE THE MASTER WAS TO TAKE TESTIMONY ON DILUTION ONLY

There is a great deal of argument in the briefs as to whether the City did, or was required to, introduce further evidence on the economic and administrative aspects of the annexation at the Hearing Before the Master. (Crusade Brief, p. 14; Holt Brief, p. 27-28; Brief for the Federal Parties, p. 35). The Court below, as well, assumed that the City should have done so, stating:

> "The Master concluded that the 'City has failed to establish any counterbalancing economic or administrative benefits of the annexation.' The Master's conclusion was predicated upon findings of fact supported by direct testimony before him." (J.S. App. B, p. 20).

The City has fully discussed this issue in its Brief, p. 51.

However, to put the question to rest as to the scope of the hearing before the Master, the order of the Court below, dated July 23, 1973, is reproduced below:

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | |
|---|---|
| CITY OF RICHMOND, VIRGINIA<br><br>Plaintiff<br>vs<br><br>UNITED STATES OF AMERICA<br>and RICHARD KLEINDIENST<br><br>Defendants<br>and<br><br>CURTIS HOLT, SR., et al<br><br>and<br><br>CRUSADE FOR VOTERS OF RICHMOND, et al<br><br>Defendant-Intervenors | Civil Action<br>No. 1718-72<br><br>Filed<br>Jul 23 1973<br>James F. Davey, Clerk |

**ORDER**

It is, this 23rd day of July 1973,
ORDERED that this matter is referred to United States Magistrate Lawrence S. Margolis to act as Special Master under Rule 53(c) of the Federal Rules of Civil Procedure for a hearing on the merits and to take testimony on the issue of whether the City of Richmond annexation plan as amended has the purpose or the effect of diluting the black vote in that City. The Master will file his report, making findings of fact and conclusions of law. The Master shall have all the powers stated in Rule 53(c); and it is

FURTHER ORDERED that the Master is hereby authorized to employ a stenographic reporting service with the cost of such service to be paid by the City of Richmond, including transcript; and it is

FURTHER ORDERED that the Master proceed with all reasonable expedition in completing his assignment.

/s/ J. Skelly Wright
/s/ Wm. B. Jones
/s/ June L. Green



Later, at a prehearing conference before the Special Master, this issue was expanded to include whether the initial annexation had the purpose or effect of diluting the black vote. There was no order entered.

Nowhere does it appear that the economic or administrative aspects of the annexation were even the subject of the hearing before the Master, and both the United States and the City objected to the economic testimony offered by Holt and declined to cross-examine. (MTR 668-672).

## THERE IS NO DECREASE IN VACANT LAND AREA

Holt's contention that the annexation resulted in "AN ACTUAL DECREASE" in vacant land (Holt Brief, p. 31) is simply a numbers game, relying on percentages of vacant land to total land area. To annex at all, Richmond must annex suburban land, contiguous to the City, which is very developed. That is the only area available, and that is part of the rationale of the annexation standards. C. Bain, *Annexation in Virginia*, Univ. Press of Va., 1966. It is necessary to annex a large area in order to acquire some vacant land, because suburban areas are developed. Actually, 7,701 acres (approximately 12 of the 23 square miles annexed) was vacant land. (HPX 15). It is, of course, impossible to *add* vacant land to a city, and by doing so, *decrease* the vacant land in the city.

## CHRONOLOGY OF EVENTS

The long history of the Annexation, and the proceedings related thereto, have been described in detail in the Brief of the Appellant, as well as the other parties. Because of the complexity of the events, and the various actions and lawsuits involved, it seems proper and helpful to set out a simple chronology of events.

1. In the 1950's studies showed that expansion of Richmond's boundaries was a necessity, because of large



population movement, especially of the young and affluent to the suburbs (JA 365, 369, 370); the need for vacant land for commercial and industrial development (JA 364, 370); and the increasing cost of government, directly related to growth of low income population. (JA 370).

2. In 1960, the City and Henrico County entered into an agreement for consolidation of the two governing bodies.

3. On December 12, 1961, a referendum was held on the agreement. Voters in the City approved the plan, but voters in Henrico County disapproved, and the plan failed. *Holt v. City of Richmond*, 450 F.2d 1093, 1094, (4th Cir. 1972), *cert. denied*, 408 U.S. 931.

4. On December 26, 1961, City Council adopted two annexation ordinances requesting convening of three-judge annexation courts and seeking the award of approximately 150 square miles of Henrico County and approximately 51 square miles of Chesterfield County.

5. In 1962, suit proceeded against Henrico County; the Chesterfield County suit held in abeyance.

6. In 1965, the annexation court awarded the city approximately 16 square miles of land area, from Henrico County, which contained 42,690 white persons and 660 black persons.

7. In March, 1965, City Council rejected the award, because the financial burden imposed on the city, $55 million, was out of proportion to the amount of territory awarded. (*Holt v. Richmond, supra*, 459 F.2d at 1095). (These actions took place prior to the Voting Rights Act of 1965, which became law on August 6, 1965).

8. The suit against Chesterfield County was then reactivated.

a. In September, 1968, after jurisdictional delays, the case came on for trial. In January, 1969, one judge disqualified himself, resulting in a mistrial.

b. In May, 1969, trial began anew and continued through June, 1969.

9. On July 12, 1969, the final order of the annexation court awarded approximately 23 square miles of land area, which contained 47,072 people, of which 1,389 were black and 45,683 were white. The population of Chesterfield County prior to the annexation was 102,633 white and 9,845 black persons. (MCX 1,2,3, MTR 210,233).

10. The annexation court adopted a compromise agreement between the City and county, the City having been fearful of another unpalatable award as with the *Henrico* suit (HTR 362, Vol. II, and 455, Vol. III, of 4 Volumes). The Court found the "necessity for and expediency of some annexation. . ." (JA 42).

11. Appeals instituted by intervenors were denied by the Court of Appeals of Virginia. A motion for stay of the effective date of annexation and a petition for certiorari were filed in this Court.

Prior to January 1, 1970, the effective date of annexation, the motion for stay was denied separately by Justices Douglas, Marshall, and Brennan. On April 20, 1971, the petition for certiorari was denied. *City of Richmond v. County of Chesterfield*, 208 Va. 278, 156 S.E.2d 586, *cert. denied, sub. nom. Deerbourne Civic & Recreation Ass'n v. Richmond*, 397 U.S. 1038.

12. January 1, 1970, pursuant to the annexation decree, the City took jurisdiction over the area.



13. On June 10, 1970, election for City Council was held in the enlarged City, with voting on the at-large basis in effect since 1948.

14. January 14, 1971, this Court decided *Perkins v. Matthews*, 400 U.S. 379, holding that the provisions of §5 of the Voting Rights Act extended to annexations which expanded the electorate, causing "dilution" of the weight of votes of the voters to whom the franchise was limited before the annexation.

15. January 28, 1971, the City Attorney, on behalf of the City, sought approval from the Attorney General, pursuant to §5, of the annexation with the at-large voting procedure. (Ex. A to Complaint, JA 20).

16. February 16, 1971, the Assistant Attorney General replied that the request was being considered, and that he would determine if any further materials were necessary for a determination.

17. February 24, 1971, a class action was instituted in the United States District Court for the Eastern District of Virginia, by Curtis Holt, Sr., alleging that the voting rights of the Plaintiff class, guaranteed by the Fifteenth Amendment, had been violated by the annexation.

18. March 5, 1971, the City submitted additional material to the Attorney General.

19. May 7, 1971, the Attorney General declined to approve the voting change resulting from annexation, in light of the at-large voting procedure (MTR 50, 53, Ex. B of the Complaint, JA 23), and referred the City to the lower court decision in *Chavis v. Whitcomb*, 305 F. Supp. 1364 (S.D. Ind. 1969). This case was reversed by this Court, on June 7, 1971, *Whitcomb v. Chavis*, 403 U.S. 124.

20. August 2, 1971, the City requested the Attorney General to reconsider his objection in view of the reversal of *Chavis*.

21. September 20, 1971, trial began in *Holt v. Richmond*, 334 F. Supp. 228 (E.D. Va. 1971) (*Holt I*).

22. September 30, 1971, the Attorney General refused to lift his objection, again suggesting, as he had previously done, that the adoption of non-racially drawn single-member districts was a means of minimizing the racial effect. (Ex. D to Complaint, JA 31).

23. November 23, 1971, the District Court in *Holt I* held that the annexation had the purpose of abridging the right to vote on account of race or color in violation of the Fifteenth Amendment. The Court found that annexation in some form was "inevitable", but found the compromise agreement, resulting in annexation, was improper (See Item 10 above) and that some City representatives were racially motivated in bringing about annexation so as to affect the upcoming 1970 elections. (334 F. Supp. 228).

24. The Court, holding that de-annexation was not required or appropriate and was impractical, (334 F. Supp. at 238), ordered a new election of City Councilmen, seven to be elected at-large by residents of the pre-annexation, or old, City, and two elected primarily from the newly annexed area.

25. December 8, 1971, this order was stayed by the United States Court of Appeals for the Fourth Circuit.

26. December 9, 1971, Curtis Holt, Sr. instituted another suit in the United States District Court for the Eastern District of Virginia (*Holt II*), alleging; *inter alia*, that the City had not complied with Section 5 of the Voting Rights Act.



27. The three-judge court in *Holt II* refused to enjoin the council election scheduled for May, 1972, and upon application to the Chief Justice of the United States, on April 24, 1971, that election was stayed until further order. 406 U.S. 903.

28. Trial of *Holt II* was continued on motion of the City and Plaintiff pending the decision of the Court of Appeals in *Holt I*.

29. May 3, 1972, the Court of Appeals rendered its decision in *Holt I*, reversing the District Court, finding that no violation of the Fifteenth Amendment was worked by the annexation. Certiorari was denied by this Court. *Holt v. City of Richmond*, 459 F.2d 1093,1100 (4th Cir. 1972), *cert. denied*, 408 U.S. 931.

30. July 5, 1972, the City again asked the Attorney General, by letter, to reconsider his objection, because it felt the decision in *Holt I* had determined the issues.

31. August 25, 1972, having received no reply from the Attorney General, and with the *Holt II* trial pending, the City filed this suit.

32. September 21, 1972, Attorney General replied to the City's request of July 5, 1972, (Item 30 above), stating that since the matter was pending before the court, reconsideration was discontinued. (Ex. A to Answer of Defendants, JA 38).

33. October 12, 1972, the Court in *Holt II* enjoined further elections.

34. March 5, 1973, this Court affirmed *Petersburg v. United States*, 354 F. Supp. 1021 (D.D.C. 1972), *aff'd* 410 U.S. 962.

35. March 8, 1973, at a preliminary hearing in this Case, the presiding judge of the court asked counsel for the City whether *Petersburg* controlled this case,

indicating he thought it was very similar. Counsel replied in the affirmative, as did counsel for the United States. (Tr. of March 8, 1973 hearing, p. 3,6).

36. The City Attorney advised City Counsel that, in the opinion of the attorneys, the City should submit a 9 - ward election plan, following *Petersburg*. (JA 394).

37. Plans were prepared and submitted to the Department of Justice. (JA 394).

38. The Department of Justice suggested modification of the plan. City Council approved the plan as modified by the Department of Justice (JA 394; MCX 15, JA 161).

39. May 15, 1973, Motion of City to consider Consent Judgment, jointly presented by City and United States, filed. (JA 5).

40. October 15, 1973, trial begun before special Master (JA 9).

41. January 21, 1974, Findings of Fact and Conclusions of Law of special Master filed. (JA 10, JS App. C).

42. March 21, 1974, hearing before three-judge court (JA 11).

43. June 6, 1974, order denying declaratory judgment.

## CONCLUSION

The Act is concerned with voting changes, and that alone.

Here, the voting change is twofold:

1. An expansion of the electorate from the annexation, with predominantly white voters, thereby diluting black voting strength in the old City; and

2. A 9-Ward plan, which eliminates the dilutive



effect of the expansion of the electorate, by guaranteeing black voters 4 seats, corresponding to black voting strength (voting age population) prior to the annexation.

That is the change in voting practice or procedures which is before the Court. Although the form of the election system will be changed, in substance there will be no change at all in black voting strength. Therefore, the change as approved by the Attorney General of the United States should be approved by this Court as not abridging or denying the right to vote on account of race or color. Such a decision will leave the future of Richmond where it belongs - in the control of the votes of its citizens.

For the reasons stated herein, and in the City's brief, it is respectfully submitted that the judgment of the Court below should be reversed, and the case remanded with instructions to grant the City's request for declaratory judgment to the effect that the change in voting procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.

Respectfully submitted,

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